

Montgomery vs. Cuomo

Exhibit Group D

Exhibit #5 – OMH “Guidance Document”

NEW YORK SECURE AMMUNITION AND FIREARMS ENFORCEMENT ACT (NY SAFE ACT)

NYS Office of Mental Health NYS Office for People With Developmental Disabilities Guidance Document

On January 15, 2013 Governor Cuomo signed the New York Secure Ammunition and Firearms Enforcement Act (SAFE) into law. Reflecting a comprehensive approach to reducing gun violence, the law toughens criminal penalties on those who use illegal guns; closes a private sale loophole to ensure all gun purchases are subject to a background check; allows authorities to track ammunition purchases in real time to alert law enforcement to high volume buys; requires recertification of pistol permits every five years; and strengthens the state's ban on high-capacity magazines and assault weapons.

In addition, the law contains several provisions pertaining to the duties of mental health professionals regarding patients who may pose a danger to self or others. The following is a brief summary of these provisions and guidance regarding their implementation.

1. Mental Hygiene Law Section 9.46 - Reporting Requirements for Mental Health Professionals:

A. Reporting Process:

SAFE establishes a new Section 9.46 of the Mental Hygiene Law (MHL), which requires four groups of mental health professionals (i.e., physicians, psychologists, registered nurses, and licensed clinical social workers), in the exercise of their reasonable professional judgment, to make a report as soon as practicable to county mental health officials if an individual for whom they are providing mental health treatment is "likely to engage in conduct that will cause serious harm to self or others." Upon receiving a

Section 9.46 report, if the county mental health official agrees with the mental health professional's determination, he or she will then report "non-clinical identifying information" to the New York State Division of Criminal Justice Services (DCJS). DCJS will then determine whether the person possesses a firearms license and, if so, will notify the appropriate local licensing official, who must suspend or revoke the license as soon as practicable. The person must surrender such license and all firearms, rifles, or shotguns to the licensing officer, but if the license and weapons are not surrendered, police and certain peace officers are authorized to remove all such weapons.

B. Reporting Standard:

With respect to initial reports made by mental health professionals, the reporting standard is "likely to engage in conduct that will cause serious harm to self or others." This standard is consistent with the "likely to result in serious harm to self or others" standard that a DCS or designee uses to direct emergency "removals" from the community to a psychiatric hospital for examination under MHL Section 9.45. This is also consistent with the standard for emergency admissions for observation, care and treatment pursuant to MHL Section 9.39.

As such, decision making with respect to a Section 9.46 report requires a clinical determination that a person's clinical state creates either: "(a) a substantial risk of physical harm to the person, as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to himself or herself, or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior which places others in reasonable fear of serious physical harm¹."

This standard differs from the non-emergency, involuntary commitment standard pursuant to MHL Section 9.27 (i.e., the "2 PC" standard). The "2 PC" standard requires certification by two physicians that an individual has a mental illness for which care and

¹ See Mental Hygiene Law Section 9.01

treatment as a patient in a hospital is essential to the person's welfare. Furthermore, the person's judgment must be so impaired that s/he is unable to understand the need for care and treatment. The courts have interpreted the 2 PC standard as requiring both mental illness and a finding that the person is dangerous to self or others, but such dangerousness may be found even without an active display of dangerous behavior, conduct, or threats if the person has a history of dangerous conduct associated with noncompliance with mental health treatment programs. Accordingly, a person could meet the "2 PC" standard, but still not pose a risk of harm that justifies action pursuant to either the emergency removal or admission standard, or the 9.46 standard.

Because the 9.46 standard is consistent with the standard that is used for emergency removals and admissions under MHL Article 9, a person who requires a Section 9.46 report could simultaneously require an emergency removal to a psychiatric hospital for an examination pursuant to MHL Section 9.41, 9.43, or 9.45. Depending on the results of the examination, such person could also thereafter be admitted and retained in a hospital pursuant to MHL Section 9.39.

The inclusion of the county mental health official in the reporting ladder is intended to ensure appropriate action is taken with respect to persons with mental illness who pose immediate threats of serious harm.

C. Confidentiality and Liability Concerns:

With any mandatory reporting requirement, concerns regarding confidentiality and liability (for making a report or, conversely, failing to make a report) may be raised. These concerns are addressed as follows:

- The law specifically provides that mental health professionals will not be subject to any civil or criminal liability if the professional's decision with respect to whether or not to report was made "reasonably and in good faith."

- Once the conditions for making a report are met, the law requires the mental health professional to report to the county Director of Community Services, or designee. If the county mental health official agrees with the determination, a report is then made to DCJS. Because these disclosures are required in the law (once the conditions for reporting are met) the mandated reports can legally be made without requiring the person's consent. Under 45 CFR § 164.512(a), the HIPAA Privacy Rule permits disclosures of protected health information without the authorization or consent of the individual to the extent that such disclosure is "required by law" and the disclosure complies with the requirements of that law.

SAFE also amends Mental Hygiene Law Section 33.13 governing disclosure of mental health clinical information to ensure the disclosures of information necessary to comply with the various reporting requirements of the new law can be legally made. The law provides that only a patient's name and other "non-clinical identifying information" (e.g., name, date of birth, race, sex, SS#, or address) can be disclosed by the county mental health official to DCJS, so that this information can be used to determine if the patient has a firearms license. If so, DCJS will report that information to the local firearms licensing official, who must either suspend or revoke the license. If the licensing official wants to obtain additional information regarding the report, the licensing official may obtain a subpoena, pursuant to the Section 33.13(c)(1) of the Mental Hygiene Law. In addition, action will be taken to remove the license and any weapons owned or possessed by the individual.

2. Background Checks for Firearms Licenses:

The federal Brady Handgun Violence Prevention Act of 1993 established the National Instant Criminal Background Check System (NICS) and requires Federal Firearms Licensees (FFL) to contact NICS before transferring a firearm to an unlicensed person. NICS will provide the FFL with information on whether the person is prohibited from receiving or possessing a firearm under federal law. Among other disqualifying criteria,

the Brady Act prohibits the receipt or possession of firearms by an individual who has been adjudicated as having a mental disability or has been involuntarily committed to a mental institution.

In response to the NICS Improvement Act of 2007, New York State began to populate the NICS database with non-clinical identifying records of individuals with mental disabilities who would meet the Brady Act disqualifying criteria. This includes persons who have been involuntarily committed or confined pursuant to Articles 9, 10 or 15 of the Mental Hygiene Law, Article 730 or Section 330.20 of the Criminal Procedure Law, Section 402 or 508 of the Correction Law, or Section 322.2 or 353.4 of the Family Court Act. Note, however, this does not include records of persons admitted to psychiatric hospitals only for observation or those who were voluntarily, and not involuntarily, admitted. The Office of Mental Health (OMH) and the Office for People With Developmental Disabilities (OPWDD) regularly update and submit this information to the NYS Division of Criminal Justice Services (DCJS), which forwards these records to the NICS database.

SAFE expands upon these provisions by creating a statewide database of firearms license holders maintained by the New York State Police. It also amends the Mental Hygiene Law to require OMH and OPWDD to transmit the information that is being submitted to the NICS database to DCJS, for the purpose of enabling DCJS to determine whether a person is disqualified from possessing a firearm under federal or state law. DCJS will check pending firearm license applications against the disqualifying data provided to it, as well as the Mental Hygiene Law Section 9.46 reports. If DCJS discovers that the applicant has such a mental health record, it will report that information to the licensing official who will be determining if a license should be granted. DCJS also will periodically check the statewide firearms license database against criminal convictions, mental health, and all other records necessary to determine if an individual is no longer eligible to possess a firearm. If DCJS discovers data suggesting that an individual is no longer eligible to possess a firearm, DCJS will then notify the appropriate licensing official, to facilitate the process to suspend or revoke the firearms license. In addition,

action will be taken to remove the license and any weapons owned or possessed by the individual.

Under NICS and State law, New York State has established a “certificate of relief from disabilities” process to permit a person who has been disqualified from possessing a firearm due to a mental disability to petition for relief from that civil rights disability. For persons who have been so disqualified, that process originates with OMH (or OPWDD). Information about how to petition for a certificate of relief can be found on OMH’s public website at www.omh.ny.gov/omhweb/nics/ or at OPWDD’s website at www.opwdd.ny.gov/opwdd_resources/opwdd_forms/nycrr_application_requirements.

3. Assisted Outpatient Treatment (AOT):

In 1999, New York State enacted “Kendra’s Law,” which established a process of requiring “assisted outpatient treatment” (in lieu of commitment to a facility) for certain persons with mental illness who otherwise may be deemed to be dangerous. SAFE expands Kendra’s Law in the following ways:

- The duration of an initial assisted outpatient treatment order has been extended to one year, from the current six months.
- Provisions are included to ensure that a treatment order “follows the person” from one county to another if the person moves. This is achieved by clarifying that the “appropriate” Director of Community Services (DCS) is the DCS in the county where the assisted outpatient resides, even if it is not the county where the AOT order was originally issued. Further, the DCS in an AOT patient’s new county of residence must be notified when the patient has or will move.
- Thirty days prior to the expiration of an AOT order, SAFE requires the DCS to evaluate the need for continued AOT.
- Explicit authority is given to the DCS to file a petition to renew an expiring AOT order when the person is missing and cannot be evaluated prior to the expiration of the order.

- Kendra's Law, which had a current sunset date in 2015, has been extended for two additional years until June 30, 2017.

Montgomery vs. Cuomo

Exhibit Group D

Exhibit #6 – OMH “Hospital Guidance”

New York State SAFE Act Reporting Guidelines for Article 28 and 31 Hospitals

- Each hospital shall have a designated staff member to coordinate reporting activities and to accept reports from mandated reporters within the hospital who have direct knowledge of and / or individuals subject to Secure Ammunition and Firearms Enforcement (SAFE) Act reporting requirements.
- All mandated reporters within the hospital who provide direct mental health treatment services and have direct knowledge of individuals subject to the SAFE Act reporting requirements, must notify the designated staff member of the information they have about the individual subject to the SAFE Act reporting requirements.
- Once one of the mandated reporters within the hospital has made a report to the Integrated SAFE Act Reporting Site (ISARS) which has been accepted, it is unnecessary for other mandated reporters to make separate additional reports to the ISARS.
- The designated staff member is responsible for confirming with the mandated reporter who made the report, that the report was accepted and for obtaining from the mandated reporter the ISARS confirmation number.
- If the designated staff member is unable to confirm that a report was accepted and has reason to believe that the patient is subject to SAFE Act reporting requirements, the staff member is then personally responsible for making a report to ISARS.
- In the event that a mandated reporter who did not make a report to ISARS learns that a report was not accepted and the mandated reporter has reasonable cause to believe the individual patient is subject to SAFE Act reporting requirements that mandated reporter must also attempt to make a report.

Montgomery vs. Cuomo

Exhibit Group D

Exhibit #7 – OMH ISARS “User Guide”



USER GUIDE

**Integrated SAFE Act Reporting System (ISARS)
Version 1.0.2.6**

New York State Office of Mental Health (OMH)

Release Date: March 15th, 2013

Updated: September 30th, 2013



PREFACE

The New York State Office of Mental Health (OMH) has developed this Document to assist Licensed Mental Health Professionals / Clinicians in using the Integrated SAFE Act Reporting System (ISARS).

Section 9.46 of New York Secure Ammunition and Firearms Enforcement Act ("SAFE Act") requires Mental Health Professionals (referred to as "Users" or "Reporting Professionals" in this document) to report to their local Director of Community Services ("DCS") when, in their reasonable professional judgment one of their patients is **"likely to engage in conduct that would result in serious harm to self or others."**

It is not intended to be a complete system or training manual, but an up-to-date reference guide for accessing reporting interface screens for the purposes of submitting reports about a mental health patient.

Periodic updates to this document will be distributed as new functional modules and screens are included and as changes are made to this application that affect the information contained in this reference. Beginning with version 1.0.2.5, OMH will publish "Release Notes" that describe new or modified functionality for each release. Release Notes will be available through a link on the NY SAFE Act page of the OMH website - http://www.omh.ny.gov/omhweb/safe_act/



REVISION HISTORY

Doc.Version	Date	Revision Description
1.0.0	03/11/2013	Document supports initial deployment of Integrated SAFE Act Reporting System (ISARS), scheduled for statewide release on March 15 th 2013.
1.0.1	03/25/2013	Added a note, for selecting provider professional type as applied to Nurse Practitioner.
1.0.2	03/28/2013	Added table of contents.
1.0.3	04/16/2013	Added changes for address, DOB and SSN entries of persons being reported. Also added new email validation error messages. (V 1.0.2.0)
1.0.4	5/3/2013	Added (V 1.0.2.2)
1.0.5	6/17/2013	Added v 1.0.2.5, GIS, explanation of validator callout and balloon help.
1.0.6	7/30/13	Added changes to professional relationship to person to submit when not part of the treatment team.
1.0.7	9/25/2013	Application v 1.0.2.6 - Added changes to the proxy submittal screen and attestation



TABLE OF CONTENTS

PREFACE	2
1. INTEGRATED SAFE ACT REPORTING SYSTEM OVERVIEW	6
2. REPORTING PORTAL - GETTING STARTED	7
2.1. Validator Callouts	11
2.2. Balloon Help.....	12
3. DATA ENTRY FOR REPORTING PROFESSIONALS	13
3.1. Navigation Tips.....	13
3.2. First Name – (Required Field)	13
3.3. Last Name – (Required Field).....	14
3.4. Provider Profession Type – (Required Field).....	14
3.5. Provider License Number – (Required Field)	15
3.6. Last 4 of SSN – (Required Field)	15
3.7. Date of Birth – (Required Field in MM/DD/YYYY)	16
3.8. Phone Number – (Required Field).....	16
3.9. Phone Number Extension – (Optional Field).....	17
3.10. Email Address – (Required Field)	17
4. DATA ENTRY - “PROFESSIONAL RELATIONSHIP TO PERSONS”	18
4.1. Person is Currently Hospitalized	18
4.2. Treatment Team Member	18
4.2.1. First Name – (Required Field)	19
4.2.2. Last Name – (Required Field).....	20
4.2.3. Contact Profession Type – (Required Field)	20
4.2.4. Contact Phone Number – (Required Field)	21
4.2.5. Contact Phone Extension – (Optional Field)	21
4.3. Last Seen – (Required Field).....	21
4.4. Treatment Relationship – (Required Field).....	22
5. DATA ENTRY - “PERSON BEING REPORTED”	22
5.1. First Name – (Required Field)	22
5.2. Middle Name – (Optional Field)	23
5.3. Last Name – (Required Field)	23



5.4.	Other Name / Maiden Name – (Optional Field).....	24
5.5.	Street Address Unknown.....	24
5.6.	Postal Address Unknown.....	25
5.7.	Street/City/State/Zip Code – (Required fields if address is known).....	25
5.8.	Address: County of Residence – (Required Field).....	28
5.9.	Date of Birth or Approximate Age – (Required Field if DOB is known)	29
5.10.	Social Security Number – (Required Field).....	31
5.11.	Gender – (Required Field).....	32
5.12.	Race – (Required Field)	32
5.13.	Diagnosis – (Optional Field If Unknown)	33
5.14.	Reason – (Required Field)	35
6.	<i>SUBMISSION AND REPORTING</i>	36
6.1.	Security & Submit – (Required Action).....	36
6.2.	Validation & Resubmission - (Required Action).....	37
6.3.	Self Attestation - (Required Action)	38
6.4.	Proxy Reporter Attestation – (Required Action)	39
6.5.	Submit another Person - (Optional Action).....	40
7.	<i>NEED HELP & “CONTACT US” OPTIONS</i>	41
7.1.	Need Help - (Optional Action).....	41
7.2.	Contact us for further Assistance - (Optional Action).....	41



1. INTEGRATED SAFE ACT REPORTING SYSTEM OVERVIEW

Mental Hygiene Law Section 9.46 (“MHL 9.46”) requires Mental Health Professionals to report to the county DCS or designee when, in their reasonable professional judgment, one of the persons for whom they are currently providing mental health treatment services is “likely to engage in conduct that would result in serious harm to self or others.”

NYS Licensed Mental Health Professional Clinicians, including Mental Health Physicians, Registered Nurses and Nurse Practitioners, Psychologists and Licensed Clinical Social Workers are eligible for SAFE Act reporting. Psychologists without a NYS license are also eligible for SAFE Act Reporting as applied to Section 9.46.

The Integrated SAFE Act Reporting System (“ISARS”) is a fully secure, hack-resilient, web based, online application to be used for reporting a potential threat to county Directors of Community Services (“DCS”) for compliance with MHL 9.46. It is composed of two web components:

- a) a Reporting Portal for Reporting Professionals, consisting of Data Entry/Submission and Self-Attestation pages for reporting threats to DCS and
- b) an Assessment Portal, consisting of Patient Data Review and Submission pages that enables the county DCS or their designees to select, review and submit one or multiple individuals’ data from the Assessment Portal to the New York State Division of Criminal Justice Service’s (“DCJS”) portal.

This User Guide is only for the Reporting Portal.

DCS will analyze each individual’s data being reported, cross check the individual’s identity when it has not been previously verified and will follow-up, if required, with the appropriate Reporting Professionals for compliance with MHL 9.46.

No Personal Health Information (“PHI”) data will be allowed to be passed on to DCJS. The system shall provide role-based access permission and authorization to each of the DCS designees through the Security Management System (“SMS”) environment of OMH.

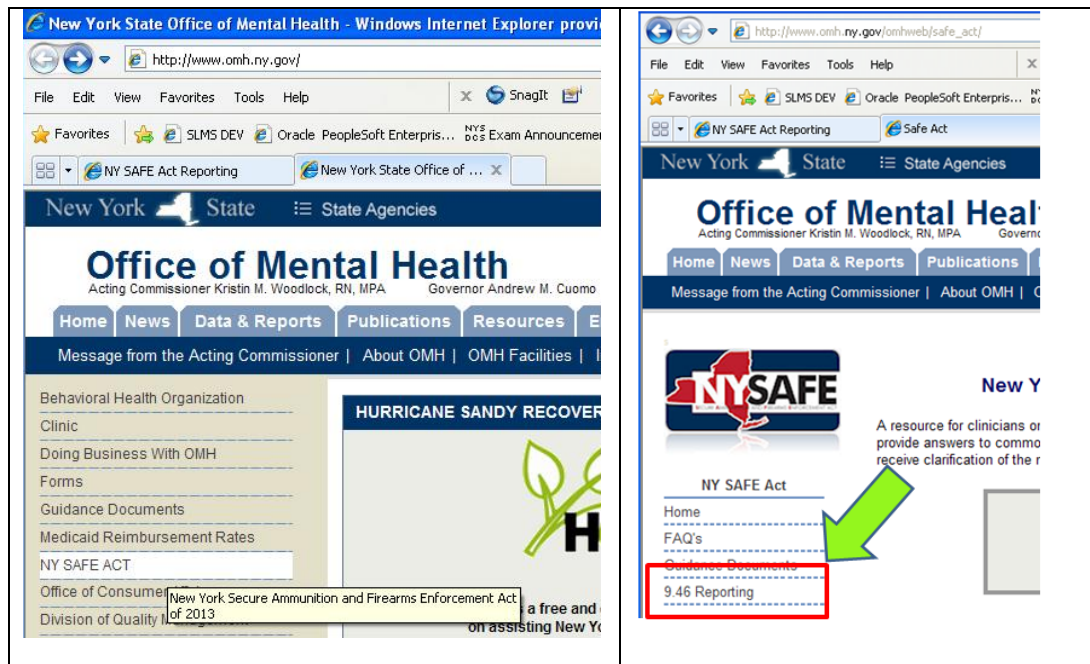
ISARS has built in functionality to verify and authenticate most Reporting Professionals’ identities in order to filter out any extraneous data being transmitted from the Reporting Portal to the Assessment Portal for county DCS.



2. REPORTING PORTAL - GETTING STARTED

1. SAFE Act Users can enter the application in one of two ways:

- a. through the OMH home page at <http://www.omh.ny.gov> by clicking the “NY SAFE ACT” link, then clicking the “9.46 Reporting” link at http://www.omh.ny.gov/omhweb/safe_act/. (Additional SAFE ACT Reporting resources are available at this site).



- b. or by directly accessing the reporting portal by typing this URL in to their web browser: <https://nysafe.omh.ny.gov>
2. The system will then display a blank reporting portal data entry screen in the User's web browser as shown below:



New York State State Agencies Search all of NY.gov

NYSAFE 9.46 NYS Mental Hygiene Law
* If risk to self or others is **imminent** *
*** Dial 911 ***

New York State Office of Mental Health

Help Contact Us

* fields with asterisk are required

Reporting Professional: Sep. 25, 2013

Professional's Name *
First Name * Last Name *

Provider Profession Type *
☐ Physician ☐ Psychologist ☐ Psychologist (License Exempt) ☐ Registered Nurse ☐ LCSW

Last 4 SSN * Date Of Birth * MM/DD/YYYY Phone Number * Phone Ext.

Email Address *

Professional Relationship To Person:
 Person Is Currently Hospitalized
☐ Hospitalized

Treatment Team Member ?
☒ I am on the treatment team for person being reported.

Last Seen * MM/DD/YYYY Treatment Relationship *

Person Being Reported:
 Name *
 First * Middle * Last *

Other Name / Maiden Name

Address
 Street *
 Street2
☐ Street Is Unknown ?
 City * New York ? ZipCode * ?

☐ Postal Address Unknown

County of Residence *
 -- choose NY county -- ?

Date of Birth or Approximate Age
 Date Of Birth * MM/DD/YYYY
☐ Date Of Birth Unknown

Social Security Number *
☐ Social Security Number Unknown

Gender *
☐ Female ☐ Male ☐ Unknown

Race *
☐ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown

Diagnosis * ?
 (for example: type 301.2 and a select list will appear. Either use arrows and press enter or choose with mouse)

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others including any specific threats, behaviors or actions:
 (for example: patient is found to be suicidal, has a detailed plan and is unwilling to contract for safety)
 Enter any specific threats, behaviors or actions here.

Enter Security And Submit:

CUP9V (Upper and Lower Case Letters are accepted)

Submit Clear



3. This data entry screen is divided into following four sections:

a. **Reporting Professional:** Information about the person who is submitting this report.

Reporting Professional:

Professional's Name *

First Name * Last Name *

Provider Profession Type *

☐ Physician ☐ Psychologist ☐ Psychologist (License Exempt) ☐ Registered Nurse ☐ LCSW

Last 4 SSN * Date Of Birth * Phone Number * Phone Ext.

Email Address *

b. **Professional Relationship to Person:** Information about the Treatment Relationship with the patient being reported. Reporters that are not direct members of the patient's treatment team must indicate this by unchecking the box under Treatment Team Member and completing information on the treatment team member they are reporting for. This can also record whether a patient is currently hospitalized.

Professional Relationship To Person:

Person Is Currently Hospitalized

☐ Hospitalized

Treatment Team Member

☒ I am on the treatment team for person being reported.

Last Seen * Treatment Relationship *

Professional Relationship To Person:

Person Is Currently Hospitalized

☐ Hospitalized

Treatment Team Member

☐ I am on the treatment team for person being reported.

Provide A Treatment Team Member Contact:

Contact Name

First Name * Last Name *

Contact Profession Type *

☐ Physician ☐ Psychologist ☐ Psychologist (License Exempt) ☐ Registered Nurse ☐ LCSW

Contact Phone Number * Contact Phone Ext.

Last Seen * Treatment Relationship *



- c. **Person Being Reported:** Demographic & Diagnostic information about the patient being reported.

Person Being Reported:

Name *

First * Middle Last *

Other Name / Maiden Name

Address

Street * Street2

☐ Street Is Unknown

City * New York ZipCode *

☐ Postal Address Unknown

County of Residence *

-- choose NY county --

Date of Birth or Approximate Age

Date Of Birth * MM/DD/YYYY

☐ Date Of Birth Unknown

Social Security Number *

☐ Social Security Number Unknown

Gender *

☐ Female ☐ Male ☐ Unknown

Race *

☐ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown

Diagnosis *

(for example: type 301.2 and a select list will appear. Either use arrows and press enter or choose with mouse)

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others including any specific threats, behaviors or actions:
(for example: patient is found to be suicidal, has a detailed plan and is unwilling to contract for safety)

Enter any specific threats, behaviors or actions here.



- d. **Security Check & Submission:** Once the Reporting Professional is done with their data entry and decides to complete the submission process, they will need to enter the security code and click on the “Submit” button. Clicking on the “Clear” button will erase all of the entered data and a new screen will be displayed to allow the User to start again.

Enter Security And Submit:

(Upper and Lower Case Letters are accepted)

Submit Clear

Version: 1.0.2.5
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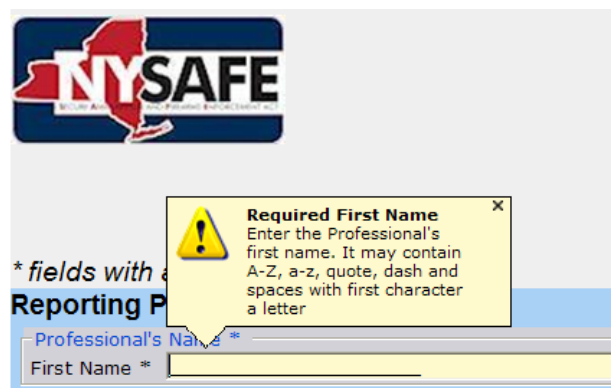
2.1. Validator Callouts

The ISARS Reporting Portal is designed to guide the Mental Health Professional in filling out the report as completely and accurately as possible. To accomplish this, the developers use both “validator callouts” and “balloon help” (described in the next section.)

A **validator** is a computer program used to check the validity or syntactical correctness of a fragment of code or document. Validator callouts are yellow boxes that may be displayed when:

- the User tabs or clicks out of a required field without entering data (depending on the browser, it might not display until the User exits and clicks back into the field)
- a User tabs or clicks out of a field where data has been entered in an incorrect format

The text of the callout will offer guidance on how the field is to be filled out as shown in the following illustration of the validator callout for the reporting Professional’s First Name field:



Where possible, the application prevents Users from entering incorrectly formatted data. For example, it is not possible to enter numeric characters into the name field; it will only accept upper and/or lower case letters, an apostrophe/single quote, a space or a dash as they are all permissible for use in a person’s first or last name.

In fields where invalid data may be entered, (e.g., entering ‘32’ into the “DD” portion of a date field) a validator callout will display when the User tabs or clicks out of the field.



2.2. Balloon Help

Balloon Help is similar to validator callouts in that it displays in a box and offers guidance on how a field should be filled out. The difference is that Balloon Help does not perform validation; it merely provides guidance based on feedback that has been received from Users of the ISARS Reporting Portal.



3. DATA ENTRY FOR REPORTING PROFESSIONALS

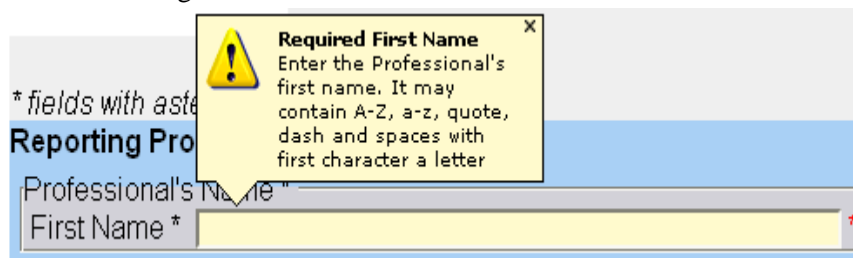
3.1. Navigation Tips

Users can enter data into a field by first navigating to that field by either clicking in to it, or using the tab key to move the cursor into it. The recommended method is to tab in to the field, which places the cursor at the beginning of the field.

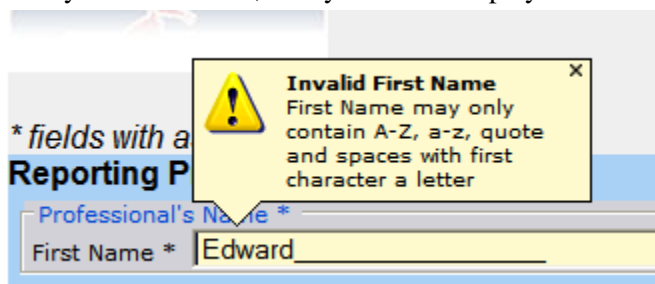
- Press the “Tab” key to move the cursor forward through the form fields
- Press “Shift + Tab” (press the shift key first and press the tab key while still holding down the shift key) to move the cursor backwards through the form fields
- To move through a row of “Radio Buttons” (round, checkable fields as pictured in the “Provider Profession Type” group box, below) click or tab into the first radio button and use the right or left arrow keys to move forward or back, respectively, through the radio buttons.
- To “Select” (check) a Radio Button either click on the radio button, or navigate to the radio button using the arrow keys as described above and press the spacebar.

3.2. First Name – (Required Field)

1. First Name is a required field. If it is left blank or contains all spaces, the system will popup an error message.



2. Numeric values are not allowed and cannot be entered. The First Name may only contain the values “A-Z”, “a-z”, a single quote (apostrophe), dash and spaces. The first character must be a letter.
3. Alias first names can be provided, separating each with a comma.
4. For any invalid entries, the system will display an error message

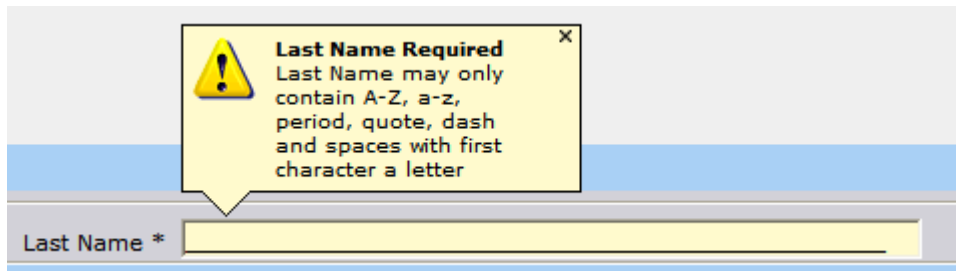




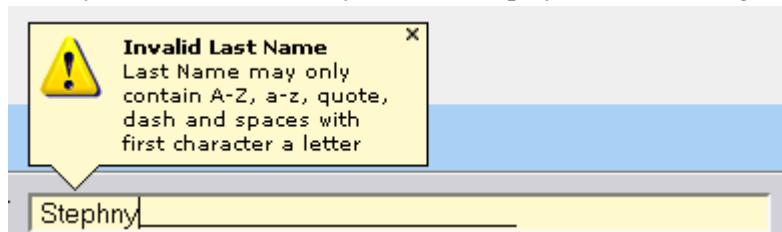
5. As the User tabs out of the first name field, any invalid data entry will prompt system to display a red “*” just after the text box, indicating that First Name is in error.
6. When the User re-enters a valid first name, the red “*” will disappear.

3.3. Last Name – (Required Field)

1. Last Name is a required field. If it is left blank or contains all spaces, the system will popup an error message.



2. Numeric values are not allowed. The Last Name May only contain the values “A-Z”, “a-z”, quotes, dash and spaces with first character must be a letter.
3. Alias last names can be provided, separating each with a comma.
4. For any invalid entries, the system will display an error message



5. As the User tabs out of the last name field, any invalid data entry will prompt the system to display a red “*” just after the text box, indicating that Last Name is in error.
6. When the User re-enters a valid last name, the red “*” will disappear.

3.4. Provider Profession Type – (Required Field)

1. Provider Profession Type is a required field. The User must select any one of the radio buttons that match their profession type.
2. Except for “Psychologist (License Exempt)”, all other Profession Types are required to enter a NYS License Number in the box under “License Number”

Note: Since the system validates the providers, a Nurse Practitioner should always select “Registered Nurse” as their provider professional type.



Provider Profession Type *

☐ Physician
 ☒ Psychologist
 ☐ Psychologist (License Exempt)
 ☐ Registered Nurse
 ☐ LCSW

License Number *

- If the User selects “Psychologist (License Exempt)”, the system will not display the box for entering a License Number as it is not required.

Provider Profession Type *

☐ Physician
 ☐ Psychologist
 ☒ Psychologist (License Exempt)
 ☐ Registered Nurse
 ☐ LCSW

- Depending on which Provider Profession Type is selected, the system will display balloon help to guide the User in selecting the correct type.

*** Dial 911 ***

* fields with asterisk are required

Reporting Professional:

Professional's Name *

First Name * Last Name *

Provider Profession Type *

☐ Physician
 ☒ Psychologist
 ☐ Psychologist (License Exempt)
 ☐ Registered Nurse
 ☐ LCSW

License Number *

Licensed Psychologist (68) only.
Licensed Master Social Workers, Art Therapists, LMHC, etc. cannot submit under MHL9.46. Please find someone on your treatment team to submit.

3.5. Provider License Number – (Required Field)

- The License Number must either have six numeric digits, or start with a “B”, “I”, or “L” followed by five digits. For any invalid entry, the system will popup an error message.

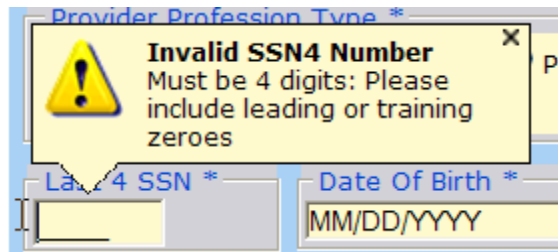
License Number *

Invalid License Number

Must be either 6 digits or start with B,I,L followed by 5 digits. For example 222222, L12345, I12345. Please include leading and trailing zeroes

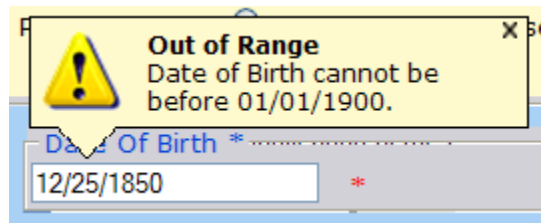
3.6. Last 4 of SSN – (Required Field)

- The Reporting Professional must enter last four digits of their SSN. For any invalid entry the system will popup an error message.

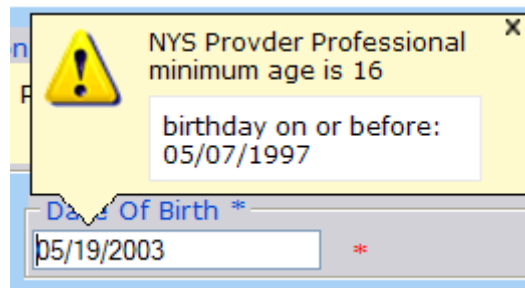


3.7. Date of Birth – (Required Field in MM/DD/YYYY)

1. Date of Birth is a required field. If it is missing or invalid, the system will display appropriate error messages.

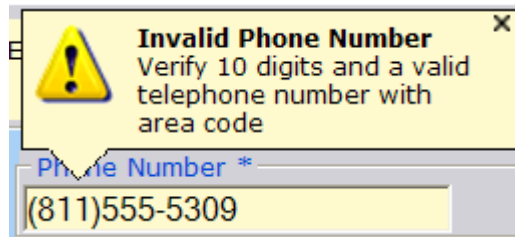


2. For NY SAFE Act reporting, the minimum age of the Reporting Professional must be 16 years.
3. Age is calculated based on the current date minus the date of birth (DOB). The result should be greater than or equal to 16 years.
4. If the age is less than 16 years, the system will display an error message.



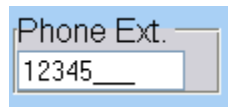
3.8. Phone Number – (Required Field)

1. Phone Number is a required field. If it is missing or invalid, the system will display an appropriate error message.
2. Phone Number should be entered in the standard format (999) 999-9999



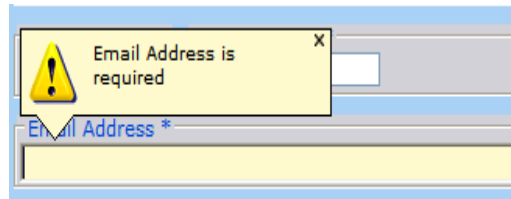
3.9. Phone Number Extension – (Optional Field)

1. This is an optional field. If entered, it should contain a valid extension number.

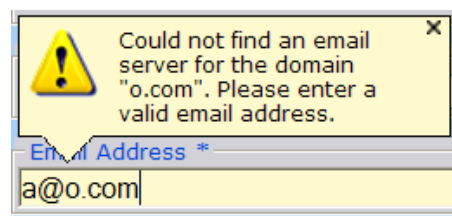
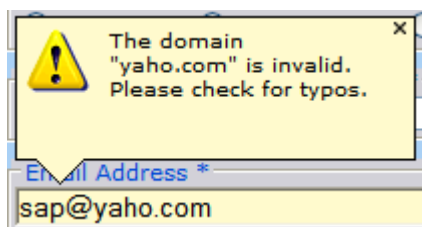
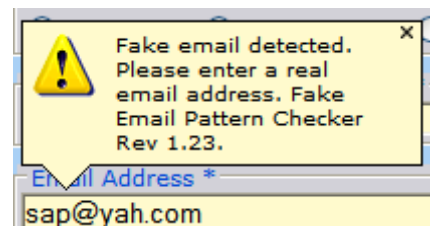
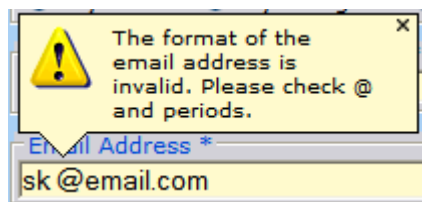


3.10. Email Address – (Required Field)

1. E-mail Address is a required field. If it is missing, the system will display an error message.



2. A valid email address should be entered in the standard format. For any invalid entry, the system will display error messages, as shown below:





4. DATA ENTRY - "PROFESSIONAL RELATIONSHIP TO PERSONS"

4.1. Person is Currently Hospitalized

1. If the patient being reported is hospitalized and the Reporting Professional is submitting the details on behalf of the hospital, then the "Hospitalized" check box should be checked.

☒ Hospitalized

2. A valid hospital name is required to be entered. For any invalid entry, an error message will popup.

The screenshot shows a portion of the ISARS form. The 'Email Address *' field is at the top. Below it is the 'Professional Relationship To Person' section, which includes a 'Person Is Currently Hospitalized' checkbox (checked) and a 'Hospital Name' text field. An error message popup is displayed over the 'Hospital Name' field, stating: 'Invalid Hospital Name. It may contain A-Z, a-z, quote, comma, \$, !, &, #, @, (,) with first character a letter'. The 'Hospital Name' field contains the text '66'.

4.2. Treatment Team Member

1. All Reporting Professionals must indicate if they are directly seeing or on the treatment team of the Person Being Reported. The following pop-up guidance is displayed when the user clicks the "Help" icon alongside the "Treatment Team Member" label:

The screenshot shows a help popup titled 'Treatment Team Member'. The text inside reads: 'Under some circumstances, you as submitter of a 9.46 report are not directly on the treatment team for the person. In that case, you must still meet all NY SAFE Act 9.46 requirements and qualifications. Additionally, you must specify someone who is on the person's treatment team, is qualified to submit a 9.46 report and has directed you to file this report on his or her behalf. To reduce submittal effort, the treatment team member's NY SED license, last four ssn and date of birth are not required as you will attest under your credentials.' At the bottom right is a button labeled 'Understood'.

2. By default, the "I am on the treatment team for person being reported" checkbox is "checked" when the reporting profession first opens the Safe Act Reporting portal.



Professional Relationship To Person:

Person Is Currently Hospitalized

☐ Hospitalized

Treatment Team Member ?

☒ I am on the treatment team for person being reported.

If the Reporting Professional is not a member of the treatment team then contact information for a member of the treatment team must be provided. When the “I am on the treatment team for person being reported” checkbox is unchecked by the Reporting Professional, then the system will display a group box for the Reporting Professional to provide contact information for the treatment team member. Note that the License Number is not collected for the treatment team member as the submitter is submitting the report using their own credentials. (see: [Proxy Reporter Attestation – \(Required Action\)](#))

Provide A Treatment Team Member Contact:

Contact Name

First Name * Last Name *

Contact Profession Type *

☐ Physician ☐ Psychologist ☐ Psychologist (License Exempt) ☐ Registered Nurse

☐ LCSW

Contact Phone Number * **Contact Phone Ext.**

4.2.1. First Name – (Required Field)

1. First Name is a required field. If it is left blank or contains all spaces, the system will popup and error message.

2. Numeric values are not allowed and cannot be entered. The First Name may only contain the values “A-Z”, “a-z”, a single quote (apostrophe), dash and spaces. The first character must be a letter. .
3. Alias first names can be provided, separating each with a comma.
4. For any invalid entries, the system will display an error message.



5. As the User tabs out of the first name field, any invalid data entry will prompt the system to display a red “*” just after the text box, indicating the First Name is in error.
6. When the User re-enters a valid first name, the red “*” will disappear.

4.2.2. Last Name – (Required Field)

1. Last Name is a required field. If it is left blank or contains all spaces, the system will pop up an error message.

2. Numeric values are not allowed. The Last Name May only contain the values “A-Z”, “a-z”, quotes, dash and spaces with first character must be a letter.
3. Alias last names can be provided, separating each with a comma.
4. For any invalid entries, the system will display an error message

5. As the User tabs out of the last name field, any invalid data entry will prompt the system to display a red “*” just after the text box, indicating that Last Name is in error.
6. When the User re-enters a valid last name, the red “*” will disappear.

4.2.3. Contact Profession Type – (Required Field)

1. Contact Profession Type is a required field. The Reporting Professional must select any one of the radio buttons that matches the profession type for the treatment team member aware of the submission.
2. Unlike the mental health professional above, the profession type must be chosen to verify compliance with 9.46; however the treatment team member's license number, dob and last four ssn are not requested.



Contact Profession Type *

☐ Physician
 ☐ Psychologist
 ☐ Psychologist (License Exempt)
 ☐ Registered Nurse
 ☐ LCSW

4.2.4. Contact Phone Number – (Required Field)

1. Contact Phone Number is a required field. If it is missing or invalid, the system will display an appropriate error message.
2. Contact Phone Number should be entered in the standard format (999) 999-9999

4.2.5. Contact Phone Extension – (Optional Field)

1. This is an optional field. If entered it should contain a valid extension number.

Contact Phone Ext.

12345

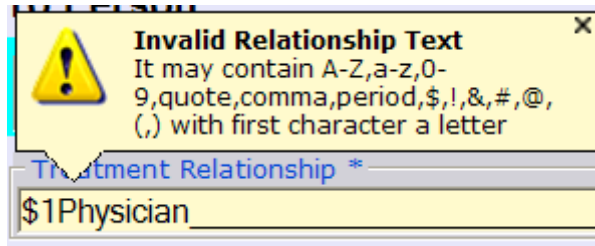
4.3. Last Seen – (Required Field)

1. Last Seen is required field. A valid date may be entered, or selected from the drop down calendar. This should be the date when the patient was last seen by the Reporting Professional .



4.4. Treatment Relationship – (Required Field)

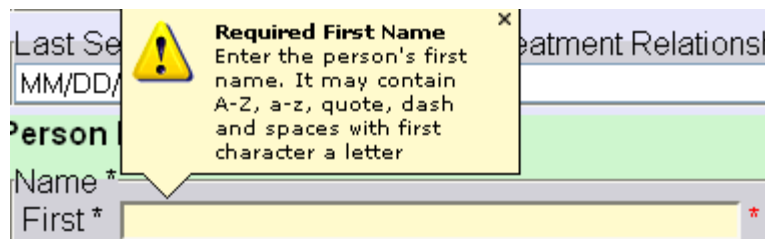
1. This is a required text field. The Reporting Professional must enter their professional relationship with the patient being reported.
2. The system will display an error message for any invalid entry (e.g., the first character is not a letter).



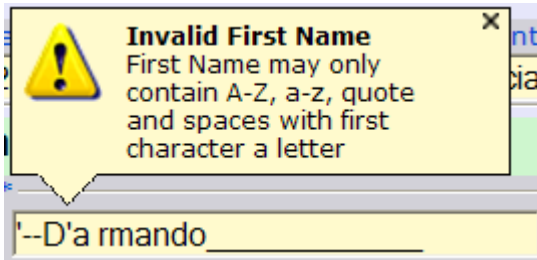
5. DATA ENTRY - “PERSON BEING REPORTED”

5.1. First Name – (Required Field)

1. First Name is a required field. If it is not entered, the system will display an error message.



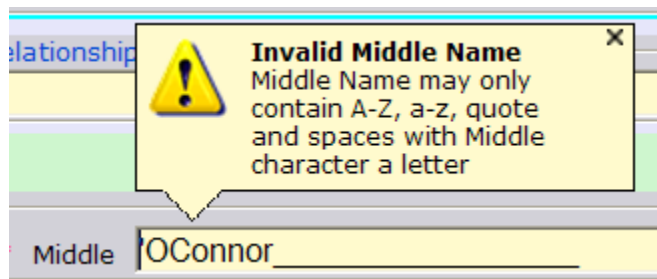
2. For any invalid entries, the system will display an error message.



3. Numeric values are not allowed (and cannot be entered). First Name may only contain the values “A-Z”, “a-z”, quotes, dash and spaces and the first character must be a letter.
4. First Name must not have all spaces.
5. Alias first names can be provided, separating each with a comma.
6. As the User tabs out of the First Name field, any invalid data entry will prompt the system to display a red “*” just after the text box, indicating that First Name is in error.
7. When the User re-enters a valid first name, the red “*” will disappear.

5.2. Middle Name – (Optional Field)

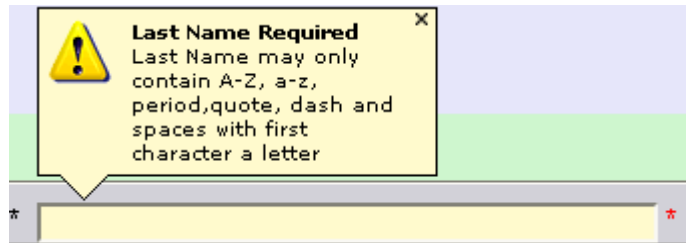
1. This is an optional field.
2. For any invalid entries, the system will display an error message.



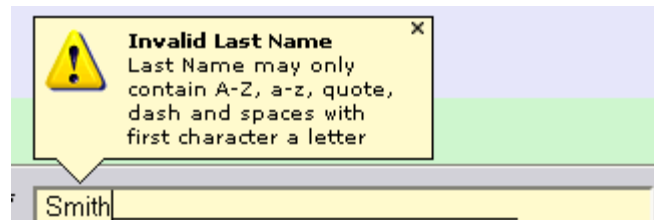
3. Numeric values are not allowed and can not be entered. May only contain values “A-Z”, “a-z”, quotes, dash and spaces and the first character must be a letter (message will be corrected from “...spaces with Middle...” to “First” in next release).
4. Middle Name can be left blank, but cannot contain all spaces.

5.3. Last Name – (Required Field)

1. Last Name is a required field. If it is not entered, the system will display an error message.

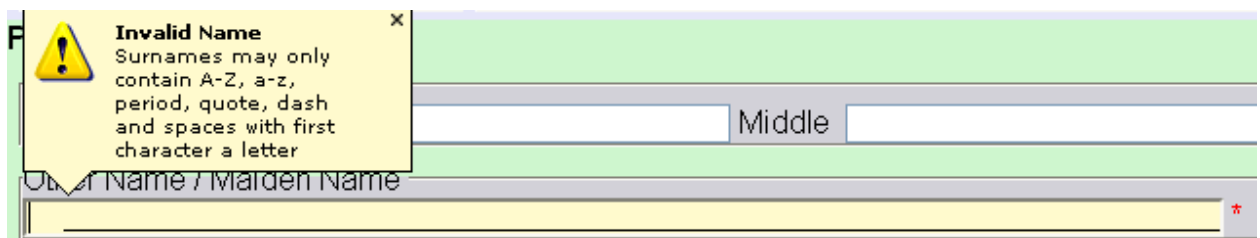


2. For any invalid entries, system will display an error message.
3. Numeric values are not allowed. Last Name may only contain the values “A-Z”, “a-z”, quotes, dash and spaces, and the first character must be a letter.
4. Last Name cannot contain all spaces.
5. Alias last names can be provided, separating each with a comma.
6. As the User tabs out of the Last name field, any invalid data entry will prompt the system to display a red “*” just after the text box, indicating that Last Name is in error.
7. When the User re-enters a valid Last Name, the red “*” will disappear.



5.4. Other Name / Maiden Name – (Optional Field)

1. This is an optional field.
2. For any invalid entries, the system will display an error message.



3. Numeric values are not allowed. Other Name / Maiden Name may only contain the values “A-Z”, “a-z”, quotes, dash and spaces, and the first character must be a letter.
4. Other Name / Maiden Name may be left blank, but must not contain all spaces.

5.5. Street Address Unknown



If the Street Address of the subject of the report is not known to the Reporting Professional, and cannot be obtained through any means, the User should check the “Street Is Unknown” checkbox located just below the “Street2” text Entry line:

Address

Street *

Street2

☒ Street Is Unknown ?

City * ? New York ? ZipCode * 12828 ?

☐ Postal Address Unknown

Doing so will hide the “Street” and “Street2” text entry lines but still enable the entry of the subject’s “City”, “State” (which is always “NY”) “Zip Code” and “County of Residence”.

Address

☒ Street Is Unknown ?

City * ? New York ? ZipCode * ?

☐ Postal Address Unknown

County of Residence *
-- choose NY county -- ?

5.6. Postal Address Unknown

If neither the Street Address, City, Zip Code, nor County of Residence for the subject are known, and are not attainable by any means, the User must check the “Postal Address Unknown” box. They will then be required to click “Understood” to the following message before proceeding with data entry:

Postal Address Unknown

The person's address is required. By checking this you have asserted that full postal address is unattainable by any means.

5.7. Street/City/State/Zip Code – (Required fields if address is known)

New in Version 1.0.2.5: Geographic Information System will automatically fill in the Zip Code and County when a valid Street Address and City are entered, or a valid City and County when a valid Street Address and Zip Code are entered.

1. If the address is known, then the User must enter the street address, street address 2(optional), city name, and zip code. All fields should be valid entries.
2. “New York” State is selected by default and cannot be changed as Users should only report on New York State residents.



Address

Street *

Street2

☐ Street Is Unknown ?

City * ? New York ? ZipCode * ?

☐ Postal Address Unknown

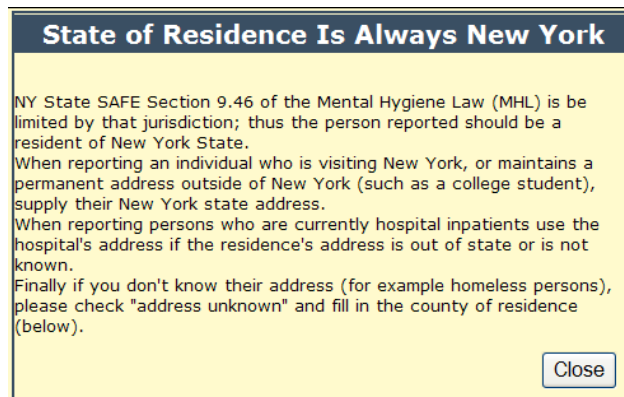
County of Residence *

-- choose NY county -- ?

3. Street: The Street field will not accept special characters; only letters, numbers, quotes, periods, or spaces may be entered. Any missing or invalid entries for street will generate error messages:


4. Street2: is an optional field.
5. City: Other than a single quote (apostrophe) the City field will not accept special characters or numbers. Any invalid entries for a city (e.g., spaces in the first character) will generate error messages:

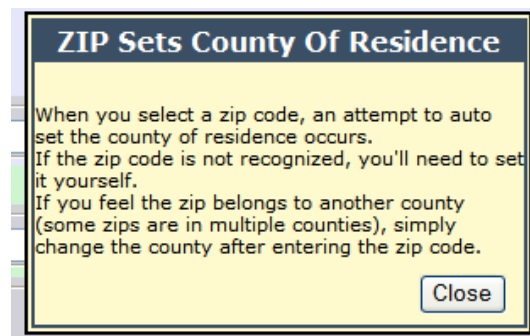
6. State: This is preselected as “New York “. Clicking the ? will pop up a message window describing the requirements for this field. Select “Close” to close this.



7. Zip Code: Enter a valid Zip Code. This field will not accept letters, special characters, or spaces.



A click on the , will pop up a message window, describing the requirements for this field, select "Close" to close this.



In the following example, the entered zip code is "12110"; the system will automatically populate the county of residence as "Albany"

City *	<input type="text"/>	State *	New York	ZipCode *	12110	?
County of Residence * Albany						

In this example, the entered zip code of "12828" belongs to multiple counties. The User must select a county or opt to manually set it by clicking the "Manually Set Later" button and selecting the county of residence from the "County of Residence" drop-down



Zipcode Spans Multiple Counties

The County of Residence cannot automatically be set using this zipcode since it spans counties.
Click To Choose A County:

☐ Saratoga

☐ Washington

5.8. Address: County of Residence – (Required Field)

1. If address of the patient being reported is known and a valid zip code is entered correctly, the County of Residence that matches the Zip Code will either be automatically populated, or the User will be presented with the option of selecting matching counties from a pop-up message, as shown in #7 of [Section 5.5](#), above.
2. If the address is not known, but the County of Residence of the person being reported is known, the correct county should be selected from the drop down list of NYS counties.
3. If the subject's County of Residence is not available, the Reporting Professional should select his/her own County of Residence.

The screenshot shows the 'County of Residence' dropdown menu with the text '-- choose NY county --'. Below it are fields for 'Date Of Birth' (MM/DD/YYYY), 'Social Security Number', and 'Race' (White, Black, American Indian). A yellow pop-up message box titled 'NY County Is Required' is overlaid on the right side of the form. The message reads: 'The county of the person is required for routing. If you know the person's zip code, this field will auto-set the county. If you absolutely don't know, please use your office's NY county of practice.' There is a 'Close' button in the bottom right corner of the pop-up.



5.9. Date of Birth or Approximate Age – (Required Field if DOB is known)

1. For SAFE Act reporting, the minimum age of the patient being reported must be between 0 - 120 years.

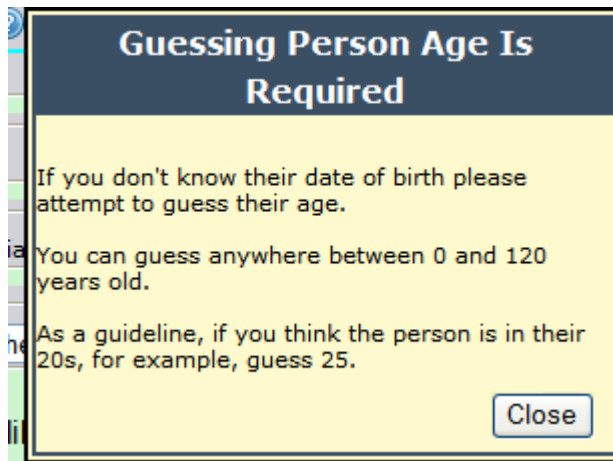
2. If birth date of the person being reported is known, a valid date must be entered. Any invalid date entries will cause the system to display error messages.



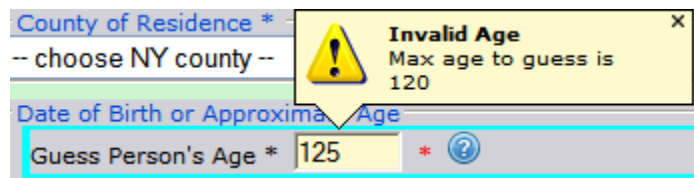
3. If DOB of the person being reported is not available, the Reporting Professional must select and check the “Date of Birth Unknown” check box. A pop up message window will then display the requirements for this field; clicking on the “Understood” button will close this.

4. If DOB of the person being reported is not available, the Reporting Professional must guess his/her approximate age and enter it in the “Guess Person’s Age” field.

5. Clicking on the ? for the “Guess Person’s Age” field will display a pop-up message window, explaining the requirements for this field; clicking on the “Close” button will close it.



6. The system will validate the age range and will generate error message if it is more than 120 years.



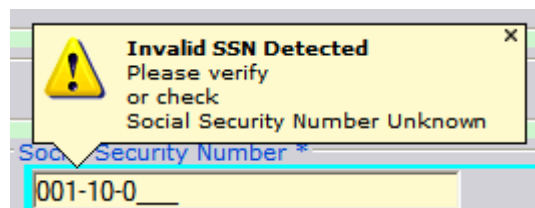
5.10. Social Security Number – (Required Field)

1. Social Security Number (SSN) of the person being reported is a required field. If known, it must be reported. Any invalid entry will generate an error message.

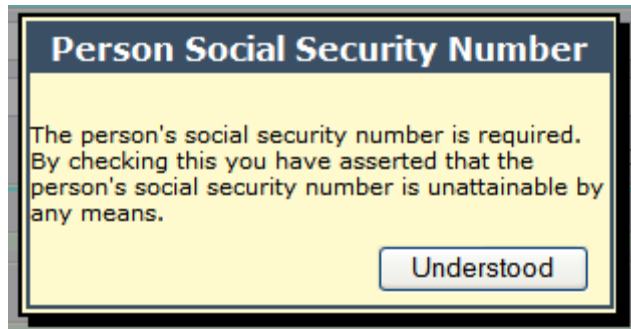
Social Security Number *

123-45-6789

☐ Social Security Number Unknown



2. If the SSN of the person being reported is not available or not attainable by any means, the Reporting Professional must select and check the "Social Security Number Unknown" check box. A pop up message window will then display the requirements for this field. Clicking on the "Understood" button will close this.



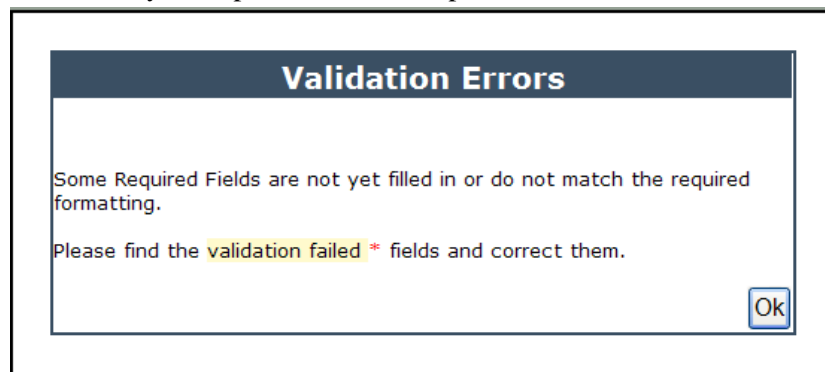
5.11. Gender – (Required Field)

1. Gender is a required field. If none of the radio buttons for gender are selected, the system will display an error message.



5.12. Race – (Required Field)

1. Race is a required field. If none of the radio buttons for race are selected, the system will alert the User when they attempt to submit the report.



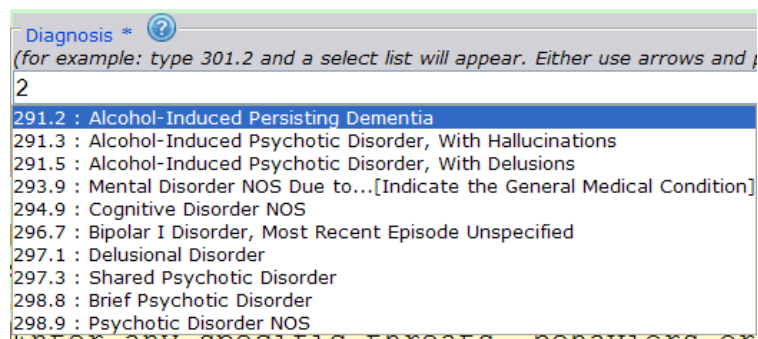
Clicking “Ok” will close the “Validation Errors” message. The User should then go and select one of the radio buttons must be selected for the appropriate race.



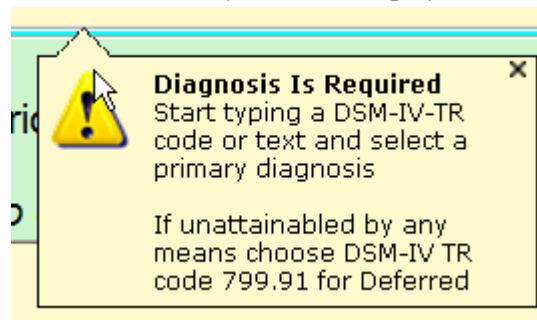


5.13. Diagnosis – (Optional Field If Unknown)

1. This is an optional field only if the Diagnosis is unknown. If the Diagnosis Code is unattainable by any means, the Reporting Professional should select code “799.91: Diagnosis or Condition deferred on Axis I”.
2. To search for a diagnosis code, enter at least one letter or number. For example if the User has entered “2”, system will display a list of DSM codes containing a “2” as shown below:



3. The User should select the most appropriate diagnosis code from the drop down list.
4. If a Diagnosis code is not selected, the system will display the following message:



5. If Characters are entered into the “Diagnosis” field, but no Diagnosis is selected from the drop-down the following warning message will display. Click “Close” to close it.



Diagnosis Typed In But Code Not Selected

You entered in text into the diagnosis field but didn't select a diagnosis.

To select:

- Enter up to two characters and a dropdown will appear.
- Select the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) code (dot is optional)

Note that the search can match either the description or part of the code.
For example:

- entering "29" will show a drop down list of all codes containing a 29
- entering "292.8" and "2928" will equivalently show diagnosis codes 292.81, 292.82, etc.
- entering "Disorder" will show all the diagnoses with that word in the description

6. Now click on the “Close” button and enter, for example, “29”
7. Select the desired Diagnosis (in this example, “2913” is selected)

Diagnosis

29

2910 : Alcohol Intoxication/Withdrawal Delirium
2911 : Alcohol-Induced Persisting Amnesic Disorder
2912 : Alcohol-Induced Persisting Dementia
2913 : Alcohol-Induced Psychotic Disorder, With Hallucinations
2915 : Alcohol-Induced Psychotic Disorder, With Delusions
2919 : Alcohol-Related Disorder NOS
2920 : Substance Withdrawal
2929 : Substance-Related Disorder NOS
2930 : Delirium Due to...[Indicate the General Medical Condition]
2939 : Mental Disorder NOS Due to...[Indicate the General Medical Condition]
2940 : Amnesic Disorder Due to...[Indicate the General Medical Condition]
2948 : Amnesic Disorder NOS; Dementia NOS

8. The system will display the selected Diagnosis in the “Primary Diagnosis Selected” field.

Diagnosis

2913 : Alcohol-Induced Psychotic Disorder, With Hallucinations

Primary Diagnosis Selected

2913 : Alcohol-Induced Psychotic Disorder, With Hallucinations

9. To delete a selected Diagnosis code and select another one, click on the “X” button and repeat the process for selecting a Diagnosis.

Diagnosis ?

(for example: type 301.2 and a select list will appear. Either use arrows and press enter or choose with mouse)

Primary Diagnosis Selected

296.33 : Major Depressive Disorder, Recurrent, Severe Without Psychotic Features

✕

Remove Diagnostic Code



5.14. Reason – (Required Field)

1. This is a required field. The Reporting Professional must enter the reason why they believe the patient being reported is a specific threat. This text field has a minimum requirement of 50 characters, and an upper limit of 500 characters. The system will display either the amount of characters needed to reach 50, or the amount of remaining characters in the bottom of this box.

To aid in evaluating submittals, please type in specific details. Reason text length must be between 50 and 500 characters

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others including any specific threats, behaviors or actions:
(for example: patient is found to be suicidal, has a detailed plan and is unwilling to contract for safety)

Mr. R has stated that he intends

18 characters needed to meet minimum (50 chars)

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others including any specific threats, behaviors or actions:
(for example: patient is found to be suicidal, has a detailed plan and is unwilling to contract for safety)

Patient has vague suicidal ideations. This patient was initially brought to the ER by police and subsequently became violent on the Psych Ward, threatening to obtain a weapon and shoot anyone who attempted to

292 characters remaining (500 max chars)



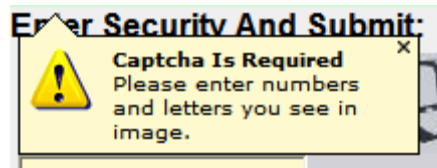
6. SUBMISSION AND REPORTING

6.1. Security & Submit – (Required Action)

1. This is a required action for security check.
2. Enter the CAPTCHA security code exactly as shown and click on the “Submit” button.

Enter Security And Submit:

3. If the CAPTCHA security code is not entered, the system will display the following message:

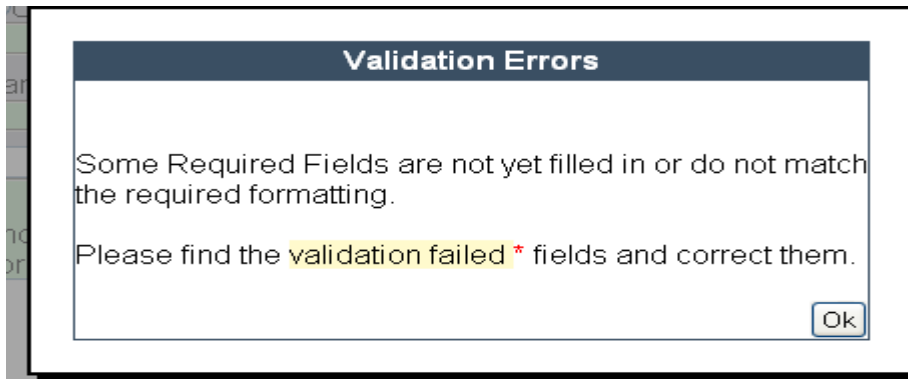


4. If the Reporting Professional cannot read the Captcha code, they can click on this refresh button to receive a new one:
5. If the reporting Professional cannot read the Captcha code due to visual impairment or other reasons, they can click the “speaker” icon to listen to an audio version of the CAPTCHA code:



6.2. Validation & Resubmission - (Required Action)

1. Once a User has clicked on the “Submit” button, the system will verify and validate all of the entered data. If any entries are invalid or missing, the system will display a “Validation Error” message.
2. Click on the “OK” button.



3. System will display the data entry screen along with highlighted erroneous or invalid fields that are required to be fixed.

Reporting Professional:

Professional's Name *
 First Name * Greg Last Name * Thomas

Provider Profession Type *
☐ Physician ☐ Psychologist ☐ Psychologist (Unlicensed) ☒ Registered Nurse ☐ LCSW

License Number *
 123456


Last 4 SSN * 1234 Date Of Birth * MM/DD/YYYY Phone Number * Phone Ext. 2345

Email Address *
 sdtt@gmail.com

Required Field Missing
 Please provide a Date of Birth.

4. Once all the fields in error are fixed with valid entries, the Reporting Professionals must enter a new CAPTCHA security code and click on the “Submit” button as before.

Enter Security And Submit:

 For security purposes please enter the code shown X6VF2

(Upper and Lower Case Letters are accepted)



6.3. Self Attestation - (Required Action)

1. After the system has successfully checked and validated all the data fields, and all are found to be complete and correctly formatted, a self attestation window will be displayed (see below).
2. Reporting Professionals will need to check the “Affirm All of the Above” check box, and click on the “Submit” button that displays when the “Affirm...” button is pressed.
3. If the Reporting Professional wishes, they can cancel the attestation process by clicking on the “Cancel” button without checking the “Affirm All of the Above” check box.

Attest and Submit Report For NYS Section 9.46 of the Mental Hygiene Law

Yorba Linda, declares, under penalty of perjury, that the following is true and correct:

- That the information provided on the report page is true and correct. I am submitting this information as required by Section 9.46 of the Mental Hygiene Law.
- I understand that providing the name, aliases, address, date of birth, ssn, gender, race, and primary diagnosis is important and omissions should only be for persons where it is not known.
- I am currently providing mental health treatment services to the individual who is the subject of this report.
- That the sole purpose of the disclosure of this information is for determining whether a firearm license issued pursuant to Section 400.00 of the Penal Law should be suspended or revoked, for determining whether a person is ineligible for a license issued pursuant to Section 400.00 of the Penal Law, or is no longer permitted under State or federal law to possess a firearm.
- I understand that if the individual has a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to self or others, I should also call 911, contact my local DCS or designee or take other appropriate action for possible removal and transport to a hospital for an examination.

☒ **Affirm All of the Above**
Tue May 07 2013 15:27:23

Submit

Cancel



6.4. Proxy Reporter Attestation – (Required Action)

1. After the system has successfully checked and validated all the data fields, and all are found to be complete and correctly formatted, a proxy report attestation window will be displayed (see below).
2. Reporting Professionals will need to check the “Affirm All of the Above” check box, and click on the “Submit” button that displays when the “Affirm...” button is pressed.
3. If the Reporting Professional wishes, they can cancel the attestation process by clicking on the “Cancel” button without checking the “Affirm All of the Above” check box.

Attest and Submit Proxy Report for NYS Section 9.46 of the Mental Hygiene Law

Doctor Test, declares, under penalty of perjury, that the following is true and correct:

- I am a physician, psychologist, registered nurse or licensed clinical social worker and I am submitting this report on behalf of the professional identified in this report, who also is a physician, psychologist, registered nurse or licensed clinical social worker and who has recently provided mental health treatment services to the subject of this report and determined that, in his/her reasonable professional judgment, the subject of this report has a mental illness and is likely to engage in conduct that would result in serious harm to self or others.
- The identified treating professional has specifically directed me to file this report on his/her behalf, is aware that I am submitting this report, and has communicated to me the clinical reasons upon which he/she has determined that the subject is such a person. I have confirmed that the information provided in this report is complete, true and correct and is fully in accordance with the provisions of Section 9.46 of the Mental Hygiene Law, and I have included those reasons in this report.
- I have provided sufficient contact information so that the treating professional can be contacted to confirm such report or to provide additional information as required by the appropriate DCS or his/her designee.
- I understand that providing the name, aliases, address, date of birth, ssn, gender, race, and primary diagnosis is important to correctly identify the person who is the subject of this report and if any such information is omitted it is only because such information is unknown.
- That the sole purpose of the disclosure of this information is for determining whether a firearm license issued pursuant to Section 400.00 of the Penal Law should be suspended or revoked, for determining whether a person is ineligible for a license issued pursuant to Section 400.00 of the Penal Law, or is no longer permitted under State or federal law to possess a firearm.
- I understand that if the individual has a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to self or others, I should also call 911, contact my local DCS or designee or take other appropriate action for possible removal and transport to a hospital for an examination.

☐ **Affirm All of the Above**

Cancel



6.5. Submit another Person - (Optional Action)

1. For all successful submissions, the system will display the following window, showing details (date and time of submission, reference number, names of Reporting Professional and Patient). The For line will only be displayed for proxy submissions.
2. To submit another patient, the User must click on the “Submit another Person” button. To end the reporting process, the User must click on the “Finished” button.

A screenshot of a web window titled "Submittal Successful". The window has a dark blue header bar with the title. Below the header, the following text is displayed: "Submitted On: 3/14/2013 9:17:14 AM", "Reference Number: QV6XtLTPI0uEaCpsrsJhVA", "By: John York", and "For: Barabara Siemens". At the bottom right of the window, there are two buttons: "Submit Another Person" and "Finished".

Submittal Successful

Submitted On: 3/14/2013 9:17:14 AM
Reference Number: QV6XtLTPI0uEaCpsrsJhVA
By: John York
For: Barabara Siemens

Submit Another Person Finished

3. The system will then display a “Thank You” message. Users must click on the “Close” button to end the session.

A screenshot of a web window titled "Thank You". The window has a dark blue header bar with the title. Below the header, the following text is displayed: "Thank you for your NY SAFE Act submittal(s) to New York State." and "You're data has now been cleared." At the bottom right of the window, there is a button labeled "Close".

Thank You

Thank you for your NY SAFE Act submittal(s) to New York State.
You're data has now been cleared.

Close



7. NEED HELP & “CONTACT US” OPTIONS

7.1. Need Help - (Optional Action)

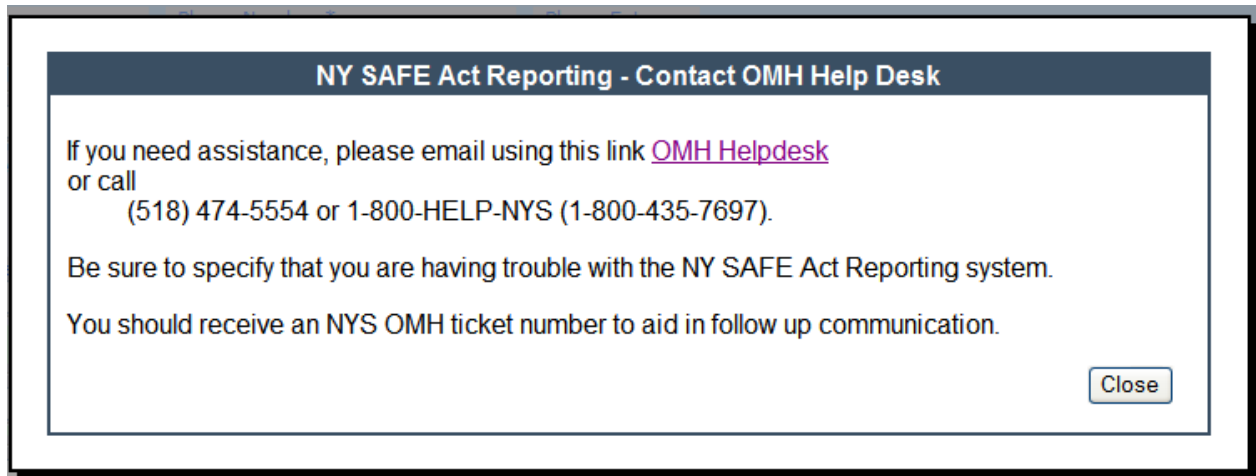
1. If you need any help, just click on the “[Help](#)” link, system will open the reporting portal user guide.

[Help](#)

7.2. Contact us for further Assistance - (Optional Action)

1. ISARS Users needing further assistance can click on the “[Contact Us](#)” link. The system will then display the following window with information on calling the OMH Helpdesk and a clickable link to send e-mail to the “[OMH Helpdesk](#).”

[Contact Us](#)



2. Clicking on the “[OMH Helpdesk](#)” link will open a mail message window (see below), for Users to enter their issues along with their name, email, and a description of the issue.

IMPORTANT: This message is sent by Unsecure mail, therefore, visitors should **NOT** transmit personal or medical information about themselves or other persons using this “Contact the Help Desk” function. **OMH CANNOT GUARANTEE THE PROTECTION/ INACCESSIBILITY BY OTHERS OF INFORMATION INCLUDED ON THIS FORM AND SENT TO OMH.**

This help request is then sent by clicking on the “[Send Mail](#)” button. The OMH Help Desk will respond as soon as possible.



Mail Message

Please enter your name, e-mail address and message below, then press 'Send Mail'.

Your Name:

Your E-Mail:

Message:

Please note that although the message box does not change size the limit to the amount of content you can enter is 1000 characters. If the content is larger than the message box a scroll bar will appear (to the right of the box) so you can review all of your text before submitting.

called

ogytwa

Enter the words above:

[Get another CAPTCHA](#)

[Get an audio CAPTCHA](#)

[Help](#)

This form enables visitors to www.omh.ny.gov to submit information to OMH by **UNSECURE EMAIL**. E-mail sent to OMH through this site is not secure, so visitors should **NOT** transmit personal or medical information about themselves or other persons using this function. **OMH CANNOT GUARANTEE THE PROTECTION/INACCESSIBILITY BY OTHERS OF INFORMATION INCLUDED ON THIS FORM AND SENT TO OMH.**

Clear Form

Send Mail

Montgomery vs. Cuomo

Exhibit Group D

Exhibit #8 – OMH “Introduction” PowerPoint (March 12, 2013)



NY SAFE Act

Introduction for Mental Health Providers

March 12, 2013

SAFE Act Summary

- Ban on large-capacity magazines
- Background checks on all ammunition purchases
- Background checks on all private sales (except to immediate family)
- Tougher assault weapons ban and registration of existing assault weapons
- Tougher criminal penalties for illegal gun use, including:
 - Enhanced sentences for murder of a first responder and gang prosecutions and drug/violent felonies that involve a loaded or unloaded gun
 - Enhanced penalties for possession of a weapon on school grounds and purchase of a gun for a disqualified individual
- Five-year recertification for firearms licenses
- Kendra's Law strengthened



New MHL 9.46

- A “mental health professional” must report person who “is likely to engage in conduct that would result in serious harm to self or others” to County Director of Community Services (DCS) or designee as soon as practicable.
- If Director of Community Services or designee agrees that the person is likely to engage in such conduct, he/she fills out and submits secure online form to the NYS Division of Criminal Justice Services (DCJS).
- DCJS determines if subject of report has or has applied for a firearms license or has registered an assault weapon, and works with State Police, which notifies the appropriate county firearms licensing official.
- The county licensing official must suspend or revoke the license as soon as practicable.
- Licensing official notifies local law enforcement to remove gun(s).

MHL 9.46 Reporting Standard

- MHL 9.46 requires “mental health professionals” to report to the county DCS or designee when, in their reasonable professional judgment, one of the persons for whom they are currently providing mental health treatment services is “likely to engage in conduct that would result in serious harm to self or others.”

MHL 9.46 Reporting Standard

- The standard has the same meaning as the term “likelihood to result in serious harm,” which is defined in current law MHL 9.01 to mean threats of, or attempts at, suicide/serious bodily harm to self, or homicidal/violent behavior towards others.
- This standard justifies the need for immediate action, such as an involuntary transport by police or an ambulance service to a psychiatric hospital for an examination.
- Mental health professionals must use reasonable professional judgment when making this determination.

Reporters under MHL 9.46

- The reporting requirement extends to “mental health professionals,” defined in the law as:
 - Physicians,
 - Psychologists,
 - Registered nurses, or
 - Licensed clinical social workers.

MHL 9.46 Effective Date

- The reporting requirement becomes effective on March 16, 2013.

Exceptions to the MHL 9.46 Reporting Requirement

- A report is not required when, in the mental health professional's reasonable professional judgment, a report would endanger him or her or would increase the danger to the potential victim or victims.

Potential Subjects of a MHL 9.46 Report

- The requirement applies to all persons receiving mental health treatment services from any of the four types of mental health professionals identified in the law — physicians, psychologists, registered nurses, or licensed clinical social workers — regardless of the setting in which they work.

Mental Health Professional Reports to DCS

- Once the conditions for making a report are met, the law requires the mental health professional to report to the local DCS or his/her designee. The mental health professional should convey information as necessary to allow the DCS or designee to review the matter to determine if he/she agrees that the person is likely to engage in such conduct and if so, the DCS or designee shall make a report to DCJS.

www.omh.ny.gov

New York  State  State Agencies

Office of Mental Health

Acting Commissioner Kristin M. Woodlock, RN, MPA

Governor Andrew M. Cuomo

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[Forms](#)

[Guidance Documents](#)

[Medicaid Reimbursement Rates](#)

[NY SAFE ACT](#)

[Office of Consumer Affairs](#)

[Division of Quality Management](#)

HURRICANE SANDY RECOVERY INFORMATION (UPDATED)

[Hurricane Sandy Resources Webpage -](#)

The Office of Mental Health has created this webpage to disseminate information about the resources available to help individuals and families recover from the adverse repercussions of Hurricane Sandy. This page will be updated as more information becomes available so please check back often.

The Office of Mental Health is now offering crisis counseling services to individuals and families affected by Hurricane Sandy. For more information, please visit the [Project Hope Crisis Counseling Program](#) webpage.

[Project Hope Crisis Counseling Program](#) is a crisis counseling program that provides emotional support and information to individuals and families affected by the adverse repercussions of Hurricane Sandy. Carefully trained and supervised crisis counselors are available to provide support and information to individuals and families who are experiencing emotional distress as a result of Hurricane Sandy.



Safe Act Guidance Documents

Safe Act - Mozilla Firefox

File Edit View History Bookmarks Tools Help

ContentCenter Professional x Safe Act x +

Back Forward Stop Home Search nys web policy section 508

Disable Cookies CSS Forms Images Information Miscellaneous Outline Resize Tools View Source Options

New York State State Agencies Search all of NY.gov

Office of Mental Health
Acting Commissioner Kristin M. Woodlock, RN, MPA Governor Andrew M. Cuomo

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NY SAFE ACT
New York Secure Ammunition and Firearms Enforcement Act of 2013

A resource for clinicians on the NY SAFE Act and Section 9.46 of the Mental Health Law. This page will be updated continuously to provide answers to commonly asked questions, guidance documents, explanatory videos and an avenue by which to ask questions and receive clarification of the new reporting requirements.

Save the Date
NY SAFE Act Reporting Requirement Webcast for Providers
Tuesday, March 12, 2013
Check Back Soon for Further Details

Comments or questions about the information on this page can be directed to the [NY SAFE Act](#).


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Last Modified: 3/1/2013

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NY SAFE Act Reporting
9.46 NYS Mental Hygiene Law
In the event of imminent risk of harm to self or others, call 911



[Help](#) [Contact Us](#)

* fields with asterisk are required Mar. 06, 2013

Reporting Professional:

Professional's Name *
 First Name * Last Name *

Provider Profession Type *
☐ Physician ☐ Psychologist ☐ Psychologist (Unlicensed) ☐ Registered Nurse ☐ LCSW

Last 4 SSN * Date Of Birth * Phone Number * Phone Ext.

Email Address *

Person Is Currently A Hospitalized Patient
☐ Hospital Submittal

Professional Relationship To Person:

Last Seen * Treatment Relationship *

Person Being Reported:

Name *
 First * Middle Last *

Other Name / Maiden Name

Address

County of Residence * -- Choose A NY County --

Street

City State ZipCode

Date Of Birth Guess Their Approximate Age *


Social Security Number Gender * ☐ Female ☐ Male ☐ Unknown

Race
☐ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown

Diagnosis
 Start typing for diagnostic code or text then choose from list

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others (including any specific threats, behaviors or actions):
 Enter any specific threats, behaviors or actions here *

Enter Security And Submit:



For security purposes
please enter the code shown

(Upper and Lower Case Letters are accepted)

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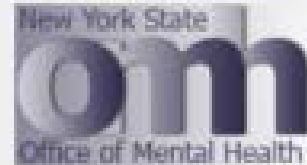




NY SAFE Act Reporting

9.46 NYS Mental Hygiene Law

In the event of imminent risk of harm to self or others, call 911



[Help](#) [Contact Us](#)

* fields with asterisk are required

Mar. 06, 2013

Reporting Professional:

Professional's Name *

First Name *

Last Name *

Provider Profession Type *

☐ Physician ☐ Psychologist ☐ Psychologist (Unlicensed) ☐ Registered Nurse ☐ LCSW

Last 4 SSN *

Date Of Birth *

MM/DD/YYYY

Phone Number *

Phone Ext.

Email Address *

Person Is Currently A Hospitalized Patient

☐ Hospital Submittal

Professional Relationship To Person:

Last Seen *

MM/DD/YYYY

Treatment Relationship *



Person Being Reported:**Name ***First * Middle Last * **Other Name / Maiden Name****Address**County of Residence * -- Choose A NY County -- Street City State ZipCode **Date Of Birth****Guess Their Approximate Age ***

MM/DD/YYYY

**Social Security Number****Gender ***☐ Female ☐ Male ☐ Unknown**Race**☐ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown**Diagnosis**

Start typing for diagnostic code or text then choose from list

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others (including any specific threats, behaviors or actions):

Enter any specific threats, behaviors or actions here *

Enter Security And Submit:



For security purposes
please enter the code shown


Submit

Clear


(Upper and Lower Case Letters are accepted)

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Completed Sample Report



NY SAFE Act Reporting
 9.46 NYS Mental Hygiene Law
In the event of imminent risk of harm to self or others, call 911



[Help](#) [Contact Us](#)

* fields with asterisk are required

Reporting Professional: Mar. 06, 2013

Professional's Name *
 First Name * Last Name *

Provider Profession Type *
☒ Physician ☐ Psychologist ☐ Unlicensed Psychology ☐ Registered Nurse ☐ CLCSW

Last 4 SSN * **Date Of Birth *** **Phone Number *** **Phone Ext.**

Email Address *

Reporting On Behalf Of A Hospital
☐ Hospital Submittal

Professional Relationship To Person:


Last Seen * **Treatment Relationship ***

Person Being Reported:

Name *
 First Name * MI / W Last Name *


Other Name / Maiden Name

Address

County of Residence * 

Street


City **State** **ZipCode**

Date Of Birth * **Guess Their Approximate Age *** 

Social Security Number **Gender ***
☐ Female ☒ Male ☐ Unknown


Race
☒ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown

Diagnosis
 Start typing for diagnostic code or text then choose from list

Primary Diagnosis Selected
 29299 : Substance Intoxication/Induced Anxiety Disorder/Sexual Dysfunction; Hallucinogen Persisting Perception Disorder (Flashbacks) 

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others (including any specific threats, behaviors or actions):
 Sam has threatened to kill his wife and children by tomorrow.

Enter Security And Submit:



For security purposes
 please enter the code shown

(Upper and Lower Case Letters are accepted)

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NY SAFE Act Reporting

9.46 NYS Mental Hygiene Law

In the event of imminent risk of harm to self or others, call 911



[Help](#) [Contact Us](#)

Mar. 06, 2013

* fields with asterisk are required

Reporting Professional:

Professional's Name *

First Name * George

Last Name * Veilleux

Provider Profession Type *

☒ Physician ☐ Psychologist ☐ Unlicensed Psychology ☐ Registered Nurse ☐ LCSW

License *

123456

Last 4 SSN *

1234

Date Of Birth *

11/25/1955

Phone Number *

5555551111

Phone Ext.

Email Address *

george.veilleux@myprovider.nyc.com

Reporting On Behalf Of A Hospital

☐ Hospital Submittal

Professional Relationship To Person:

Last Seen *

03/06/2013

Treatment Relationship *

Patient





NY SAFE Act Reporting

9.46 NYS Mental Hygiene Law

In the event of imminent risk of harm to self or others, call 911



[Help](#) [Contact Us](#)

Mar. 06, 2013

If Psychologist does not
have a license
License field is
automatically removed

** fields with asterisk are required*

Reporting Professional:

Professional's Name *

First Name * Daniel

Last Name * Brogan

Provider Profession Type *

☐ Physician ☐ Psychologist ☒ Psychologist (Unlicensed) ☐ Registered Nurse ☐ LCSW

Last 4 SSN *

1234

Date Of Birth *

11/25/1955

Phone Number *

5185551212

Phone Ext.

Email Address *



Person Being Reported:**Name ***

First Name * Sam MI W Last Name * Ramos

Other Name / Maiden Name**Address**

County of Residence * Kings

Street 4031 Briercliff Road

City New York State New York ZipCode 10013

Date Of Birth

02/20/1956

Guess Their Approximate Age *

57

Social Security Number

111223333

Gender *☐ Female ☒ Male ☐ Unknown**Race**☒ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown**Diagnosis**

Start typing for diagnostic code or text then choose from list

Primary Diagnosis Selected

29289 : Substance Intoxication/-Induced Anxiety Disorder/Sexual Dysfunction; Hallucinogen Persisting Perception Disorder (Flashbacks)

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others (including any specific threats, behaviors or actions):

Sam has threatened to kill his wife and children by tomorrow.

Enter Security And Submit:



For security purposes
please enter the code shown

XK8ZV

Submit

Clear

(Upper and Lower Case Letters are accepted)

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Submitting When Individual is Hospitalized

NYSAFE NY SAFE Act Reporting
9.46 NYS Mental Hygiene Law
In the event of imminent risk of harm to self or others, call 911

New York State Office of Mental Health

[Help Contact Us](#)

Mar. 06, 2013

* Fields with asterisk are required

Reporting Professional:

Professional's Name *
First Name * Daniel Last Name * Brogan

Provider Profession Type *
☐ Physician ☐ Psychologist ☐ Psychologist (Unlicensed) ☐ Registered Nurse ☐ CLCSW License * 123456

Last 4 SSN * 1234 Date Of Birth * 11/25/1955 Phone Number * 5185551212 Phone Ext. *

Email Address *
daniel.brogan@nyprovider.ny.com

Person Is Currently A Hospitalized Patient ☒ Hospital Submittal Hospital Name * BROOKHAVEN MEMORIAL HOSPITAL MEDICAL CENTER INC

Professional Relationship To Person:

Last Seen * 03/06/2013 Treatment Relationship * Patient

Person Being Reported:

Name *
First * Sam Middle * Last * Ramos

Other Name / Maiden Name *

Address

County of Residence * Kings Street 4031 Bnecloff Road City New York State New York Zip Code 10013

Date Of Birth 02/20/1956 Guess Their Approximate Age * 57

Social Security Number 111223333 Gender * ☐ Female ☐ Male ☐ Unknown

Race ☐ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown

Diagnosis
Start typing for diagnostic code or text then choose from list

Primary Diagnosis Selected
29211 : Substance-Induced Psychotic Disorder, With Delusions

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others (including any specific threats, behaviors or actions).
Sam has threatened to kill his wife and children by tomorrow

Enter Security And Submit:

For security purposes please enter the code shown
061E3

(Upper and Lower Case Letters are accepted)

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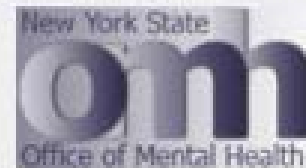




NY SAFE Act Reporting

9.46 NYS Mental Hygiene Law

In the event of imminent risk of harm to self or others, call 911



[Help](#) [Contact Us](#)

* fields with asterisk are required

Mar. 06, 2013

Reporting Professional:

Professional's Name *

First Name * Daniel

Last Name * Brogan

Provider Profession Type *

☒ Physician ☐ Psychologist ☐ Psychologist (Unlicensed) ☐ Registered Nurse ☐ LCSW

License *

123456

Last 4 SSN *

1234

Date Of Birth *

11/25/1955

Phone Number *

5185551212

Phone Ext.

Email Address *

daniel.brogan@nyprovider.ny.com

Person Is Currently A Hospitalized Patient

☒ Hospital Submittal

Hospital Name *

BROOKHAVEN MEMORIAL HOSPITAL MEDICAL CENTER INC

Professional Relationship To Person:

Last Seen *

03/06/2013

Treatment Relationship *

Patient



Name *

First * Sam Middle Last * Ramos

Other Name / Maiden Name

Address

County of Residence * Kings
Street 4031 Briercliff Road
City New York State New York ZipCode 10013

Date Of Birth

02/20/1956

Guess Their Approximate Age *

57

Social Security Number

111223333

Gender *

☐ Female ☒ Male ☐ Unknown

Race

☒ White ☐ Black ☐ American Indian/ Alaskan ☐ Asian Pacific Islander ☐ Other ☐ Unknown

Diagnosis

Start typing for diagnostic code or text then choose from list

Primary Diagnosis Selected

29211 : Substance-Induced Psychotic Disorder, With Delusions

Reason you believe the person is likely to engage in conduct that would result in serious harm to self or others (including any specific threats, behaviors or actions):

Sam has threatened to kill his wife and children by tomorrow

Enter Security And Submit:



For security purposes
please enter the code shown

(Upper and Lower Case Letters are accepted)

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If pressed, for next person to be submitted, professional's information does **not** need to be re-entered.

When pressed, all information is cleared and moved to a "thank you page"

Submittal Successful - 3/6/2013 4:49:20 PM

Reference Number: XJ2TWX8A42
By: Daniel Brogan
For: Sam Ramos

Submit Another Person

Finished

Last 4 SSN *	Date Of Birth *	Phone Number *	Phone Ext.
1234	11/25/1955	5185551212	

Email Address *
 daniel.brogan@nyprovider.ny.com

Person Is Currently A Hospital Submittal
☒ Hospital Submittal

Relationship *
 VEN MEMORIAL HOSPITAL MEDICAL CENTER INC

Required Relationship Data
 Enter in your relationship to the person.

Professional Relations

Last Seen *
 03/06/2013

Treatment Relationship *

March, 2013

Su	Mo	Tu	We	Th	Fr	Sa
24	25	26	27	28	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

First Name *

Middle

Last *

DCS Reports to DCJS

- DCS reports will be made through a secure online portal.
- A DCS or designee may only disclose a patient's name and other non-clinical identifying information (e.g., name, date of birth, race, sex, SS#, address) to DCJS.
- DCJS, working with State Police, will use that information to determine if the patient has or has applied for a firearms license or has registered an assault weapon. If the patient has such a license/registration, State Police will report that information to the local firearms licensing official, who must either suspend or revoke the license.

Immunity Standard under MHL 9.46

- The new law specifically provides that if a mental health professional uses “reasonable professional judgment” and acts in “good faith” when making a determination, this decision cannot be the basis for any civil or criminal liability on the part of that professional.

Mechanics of 9.46 Form Submission

- Directors/designees will be able to access IJ Portal screens relating to the 9.46 form.
- The 9.46 form captures a patient's demographic information. No diagnosis/medical information is provided.
- Information captured on the form will only be visible to a limited number of DCJS and State Police staff who will be responsible for matching the individuals identified on the form with pending and active firearms licenses and assault weapons registrations.

Confidentiality

- DCJS must destroy a report five years after receipt.
- DCJS currently receives, processes and stores confidential criminal justice data. The agency has established detailed protocols and systems to maintain the confidentiality of the information and ensure that it is only accessed by appropriate individuals for legitimate business purposes.
- FOIL requires that the state keep confidential information that would result in an unwarranted invasion of personal privacy.

Questions?

Does the reporting requirement apply to “mental health professionals” providing services outside of a psychiatric ward — such as in private practice or on general hospital wards?

- Yes, the requirement to report is not dependent upon the location of the treating professional or the patient.

Does MHL 9.46 prevent mental health professionals from reporting directly to law enforcement?

- MHL 9.46 does not affect or limit other reporting authority under the law. For example, mental health professionals are currently authorized to report to law enforcement, without violating patient confidentiality, when the patient poses an imminent threat to self or others.
- In addition, under MHL 9.45, certain mental health professionals may report to the DCS or designee when a person has a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to self or others. Under such circumstances, the DCS or designee may direct the removal of the person to a psychiatric hospital for an examination.

Does the SAFE Act require an assessment for an emergency removal order under 9.45 of the Mental Hygiene Law each time a MHL 9.46 report is made?

- Though not explicitly required under the SAFE Act, it is likely that when reviewing each 9.46 report for persons who are not already hospitalized, the DCS (or designee) will also review each 9.46 report to determine whether to direct an emergency “removal” and transport to a hospital for a psychiatric examination and possible admission, since the standard by which 9.46 reports are to be made is consistent with the standard for an emergency assessment under Mental Hygiene Law Section 9.45.

Does the reporting requirement pertain to children?

- There is no age restriction or limitation in the SAFE Act, however an individual mental health professional should use their reasonable professional judgment while understanding that the notification is for the purpose of limiting access to firearms and that the duration of any individual report will last for 5 years.

www.omh.ny.gov/omhweb/safe_act/

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NY SAFE ACT
New York Secure Ammunition and Firearms Enforcement Act of 2013

A resource for clinicians on the NY SAFE Act and Section 9.46 of the Mental Health Law. This page will be updated continuously to provide answers to commonly asked questions, guidance documents, explanatory videos and an avenue by which to ask questions and receive clarification of the new reporting requirements.

Save the Date
NY SAFE Act Reporting Requirement Webcast for Providers
Tuesday, March 12, 2013
Check Back Soon for Further Details

Comments or questions about the information on this page can be directed to the [NY SAFE Act](#).

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Montgomery vs. Cuomo

Exhibit Group D

Exhibit #9A – OMH “Certificate of Relief” webpage

Office of Mental Health

Ann Marie T. Sullivan, M.D., Commissioner

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[Message from the Commissioner](#) | [About OMH](#) | [OMH Facilities](#) | [Initiatives](#) | [Contact OMH](#) | [FAQ](#)

Certificate of Relief Pertaining to Firearm Possession

To view or print PDF files, Adobe Acrobat Reader must be installed on your computer. [Download Adobe Acrobat Reader](#).

If you have been, or may be, disqualified from possessing a firearm based on an involuntary commitment to a mental health facility in New York State, you may petition the New York State Office of Mental Health (OMH) for relief from that civil rights disability. OMH will review your application and determine whether your record and reputation are such that you will not be likely to act in a manner dangerous to public safety and where granting the relief would not be contrary to the public interest.

- [Background](#)
- [Certificate of Relief Process and Forms](#)
- [Contact the NICS Appeals Office, New York State Office of Mental Health](#)
Phone: (518) 549-1180
- [Frequently Asked Questions](#)
- [For Law Enforcement](#)
- [Forms to Apply for the Certificate of Relief](#)
- [Overview of the application process](#)

Background

The NICS Improvement Act amends the Brady Handgun Violence Prevention Act of 1993, which established the National Instant Criminal Background Check System (NICS). The Brady Act requires Federal Firearms Licensees (FFL) to contact NICS before transferring a firearm to an unlicensed person. NICS will provide the FFL with information on whether the person is prohibited from receiving or possessing a firearm under state or federal law.

Federal law prohibits the receipt or possession of firearms by an individual who has been adjudicated as having a mental disability or committed to a mental institution as those terms are defined in 14 NYCRR Part 543. These terms include an involuntary commitment to a mental institution and commitment for other reasons, such as drug use. The terms do not include a person who was received by a psychiatric hospital for observation only or a person who was voluntarily admitted but not involuntarily admitted to a psychiatric hospital.

Federal Law requires that New York State establish a "certificate of relief from disabilities" process to permit a person who has been disqualified from possessing a firearm to petition for relief from that civil rights disability.

To Apply for the Certificate of Relief

To apply for the certificate of relief, you must complete the [application](#) (PDF) and submit it to OMH along with all other [required documentation](#). Application packets may also be obtained by contacting the NICS Appeals Office, Office of Central Files, Office of Mental Health 44 Holland Avenue, Albany, New York 12209, [via e-mail](#), or via telephone at (518) 549-1180. All documentation must be sent by mail (return receipt is preferable). Incomplete applications cannot be considered.

Overview of the Application Process

Once you have submitted the application and additional documentation, your application will be reviewed by OMH and a determination will be issued whether or not to issue a certificate of relief from disabilities.

If OMH finds that you have demonstrated that gun ownership would not be dangerous to public safety or contrary to public interest, you will be issued a written determination indicating that a certificate of relief has been issued. OMH will also notify NICS of the issuance of the certificate of relief from disabilities for the purpose of updating your record. You will also be provided with written notice that the certificate of relief does not automatically qualify you to purchase or possess a firearm. The certificate of relief will only remove the civil rights disability based on your psychiatric hospitalization in New York State.

If you are denied a certificate of relief, you will receive this decision in writing and will be notified that you have the right to have the

decision reviewed in accordance with New York State law. Please be advised that if you are denied, you may not apply again for a certificate of relief until one year after the date that the written determination is issued.

For Law Enforcement

For assistance in verifying the identity of an individual that has appeared on the NICS database, contact the NICS Appeals Officer via the OMH Help Desk at (518) 549-1180 or by e-mail. Please have all identification information available to provide to the NICS Appeals Officer.

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Exhibit Group D

Exhibit #9B – OMH “Certificate of Relief” webpage

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Certificate of Relief Request Pursuant to Mental Hygiene Law Section 7.09(j) and Part 543 of Title 14 NYCRR

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If you have or may be disqualified from possessing a firearm pursuant to the federal Brady Act as a result of being committed to a mental institution or adjudicated as having a mental disability, and your records were submitted to the National Instant Criminal Background Check System by the Office of Mental Health, you may apply to the Commissioner of Mental Health for a Certificate of Relief from Disabilities pursuant to New York State Mental Hygiene Law Section 7.09(j). A determination as to whether or not to grant a Certificate of Relief is based on whether or not a person's record and reputation are such that he/she will not be likely to act in a manner dangerous to public safety and granting the relief would not be contrary to the public interest.

Application Requirements

1. To apply for the Certificate of Relief, you must [complete the application](#) (PDF) and submit it to NICS Appeals Office, OMH Central Files, New York State Office of Mental Health, 44 Holland Ave., Albany, NY 12229.
2. In addition to the forms provided, you must submit the following information:
 - a. True and certified copies of medical records detailing your psychiatric history over the past 20 years, which shall include the records pertaining to the commitment to a mental health facility, or adjudication as having a mental disability, which is the subject of the request for relief;
 - b. True and certified copies of medical records from all of your current treatment providers over the past 5 years, if you are receiving treatment;
 - c. True and certified records from any previous alcohol/substance abuse providers over the past 20 years;
 - d. A true and certified copy of all criminal history information maintained on file at the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) pertaining to you, or a copy of a response from DCJS or the FBI indicating that there is no criminal history information on file. To obtain a certified copy of your New York State criminal history information, you must call the DCJS Record Review Unit or write to the address listed below to request the necessary forms:

New York State Division of Criminal Justice Services
Criminal History Bureau
Record Review Unit – 5th Floor
4 Tower Place
Albany, New York 12203-3764
(518) 485-7675

To obtain a certified copy of your criminal history information from the Federal Bureau of Investigation please visit the following website: www.fbi.gov/hq/cjisd/fprequest.htm.

The Federal Bureau of Investigation will require a signed cover letter, provided by the FBI, along with proof of identity (set of fingerprints) and payment to be sent to:

FBI CJIS Division – Record Request
1000 Custer Hollow Road
Clarksburg, West Virginia 26306.

- e. Evidence of your reputation, which may include notarized letters of reference from current and past employers, family members or personal friends, affidavits, or other character evidence;
 - f. Any further information specifically requested by the Office of Mental Health. If documents are requested, certified copies of original documents must be provided. After you submit your completed application, we will notify you if additional information will be requested.
3. You may provide a psychiatric evaluation performed no earlier than 90 calendar days from the date that you are submitting the request for this certificate of relief, conducted by a "qualified psychiatrist." A "qualified psychiatrist" is a physician licensed to practice medicine in New York State who is a diplomat of the American board of psychiatry and neurology or is eligible to be certified by that board, or is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board. **Please inform the "qualified psychiatrist" that this evaluation must include an opinion as to whether or not your record and reputation are such that you will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief would be contrary to the public interest.**
4. Whether or not you provide a psychiatric evaluation, we may also request that you undergo a clinical evaluation and risk assessment. If we make this request, the evaluation must be performed 45 calendar days from the date we request the evaluation, unless we allow an extension of time.

It is *Your* responsibility to ensure that all required information accompanies this request when you submit it to OMH. Information provided after our receipt of the initial request for relief will not be considered. If we request additional information, it is *Your* responsibility to provide it in accordance with our request. Information specifically requested by us must be received within 60 days of the date requested in order for it to be considered. Failure to meet these time frames will result in a denial of the certificate of relief.

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Exhibit Group D

Exhibit #9C – OMH “Application”

Office of Mental Health

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Certificate of Relief Request Pursuant to Mental Hygiene Law Section 7.09(j) and Part 543 of Title 14 NYCRR

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If you have or may be disqualified from possessing a firearm pursuant to the federal Brady Act as a result of being committed to a mental institution or adjudicated as having a mental disability, and your records were submitted to the National Instant Criminal Background Check System by the Office of Mental Health, you may apply to the Commissioner of Mental Health for a Certificate of Relief from Disabilities pursuant to New York State Mental Hygiene Law Section 7.09(j). A determination as to whether or not to grant a Certificate of Relief is based on whether or not a person's record and reputation are such that he/she will not be likely to act in a manner dangerous to public safety and granting the relief would not be contrary to the public interest.

Application Requirements

1. To apply for the Certificate of Relief, you must [complete the application](#) (PDF) and submit it to NICS Appeals Office, OMH Central Files, New York State Office of Mental Health, 44 Holland Ave., Albany, NY 12229.
2. In addition to the forms provided, you must submit the following information:
 - a. True and certified copies of medical records detailing your psychiatric history over the past 20 years, which shall include the records pertaining to the commitment to a mental health facility, or adjudication as having a mental disability, which is the subject of the request for relief;
 - b. True and certified copies of medical records from all of your current treatment providers over the past 5 years, if you are receiving treatment;
 - c. True and certified records from any previous alcohol/substance abuse providers over the past 20 years;
 - d. A true and certified copy of all criminal history information maintained on file at the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) pertaining to you, or a copy of a response from DCJS or the FBI indicating that there is no criminal history information on file. To obtain a certified copy of your New York State criminal history information, you must call the DCJS Record Review Unit or write to the address listed below to request the necessary forms:

New York State Division of Criminal Justice Services
Criminal History Bureau
Record Review Unit – 5th Floor
4 Tower Place
Albany, New York 12203-3764
(518) 485-7675

To obtain a certified copy of your criminal history information from the Federal Bureau of Investigation please visit the following website: www.fbi.gov/hq/cjisd/fprequest.htm.

The Federal Bureau of Investigation will require a signed cover letter, provided by the FBI, along with proof of identity (set of fingerprints) and payment to be sent to:

FBI CJIS Division – Record Request
1000 Custer Hollow Road
Clarksburg, West Virginia 26306.

Certificate of Relief Pertaining to Firearm Possession Back Page
You must allow approximately 16-18 weeks for processing, upon receipt by the FBI. Either a no record response or a FBI Identification Record will be mailed to you.

- e. Evidence of your reputation, which may include notarized letters of reference from current and past employers, family members or personal friends, affidavits, or other character evidence;
 - f. Any further information specifically requested by the Office of Mental Health. If documents are requested, certified copies of original documents must be provided. After you submit your completed application, we will notify you if additional information will be requested.
3. You may provide a psychiatric evaluation performed no earlier than 90 calendar days from the date that you are submitting the request for this certificate of relief, conducted by a "qualified psychiatrist." A "qualified psychiatrist" is a physician licensed to practice medicine in New York State who is a diplomat of the American board of psychiatry and neurology or is eligible to be certified by that board, or is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board. **Please inform the "qualified psychiatrist" that this evaluation must include an opinion as to whether or not your record and reputation are such that you will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief would be contrary to the public interest.**
4. Whether or not you provide a psychiatric evaluation, we may also request that you undergo a clinical evaluation and risk assessment. If we make this request, the evaluation must be performed 45 calendar days from the date we request the evaluation, unless we allow an extension of time.

It is *Your* responsibility to ensure that all required information accompanies this request when you submit it to OMH. Information provided after our receipt of the initial request for relief will not be considered. If we request additional information, it is *Your* responsibility to provide it in accordance with our request. Information specifically requested by us must be received within 60 days of the date requested in order for it to be considered. Failure to meet these time frames will result in a denial of the certificate of relief.

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Exhibit Group D

Exhibit #9D – OMH “Frequently Asked Questions” webpage

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Ann Marie T. Sullivan, M.D., Commissioner

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Certificate of Relief Pertaining to Firearm Possession Frequently Asked Questions

General questions:

1. [What is the NICS database?](#)
2. [Who is identified in the NICS system?](#)
3. [Can an individual contest his/her inclusion in the NICS database?](#)
4. [How do I contact OMH if I have been disqualified from possessing a firearm based on my hospitalization?](#)
5. [What is the Certificate of Relief from Disabilities relating to Firearm Possession?](#)
6. [How do I apply for the Certificate of Relief from Disabilities?](#)
7. [What documentation must be submitted to be considered for a Certificate of Relief from Disabilities?](#)
8. [How do I obtain a copy of criminal history information?](#)
9. [Will I be required to undergo a clinical evaluation and risk assessment?](#)
10. [Does the granting of a Certificate of Relief from Disabilities automatically qualify a person to purchase a firearm?](#)
11. [If the application for Certificate of Relief from Disabilities is denied, can the applicant re-apply?](#)

For Law Enforcement:

1. [How does a law enforcement official contact OMH regarding firearm possession?](#)
2. [What if a disqualified applicant contests his/her inclusion in the NICS database?](#)
3. [Will OMH provide verification for an individual contesting his/her inclusion in the NICS database?](#)
4. [What information do I have to provide to OMH for the verification process?](#)

Additional Resources:

1. [Where can I find additional information on NICS?](#)
2. [What if I have questions about the application process?](#)

General Questions:

1. What is the NICS database?

The National Instant Criminal Background Check System (NICS) was established by the Brady Handgun Violence Prevention Act (Brady Act) of 1993, Public Law 103-159. Pursuant to this law, Federal Firearms Licensees (FFLs) must contact the NICS system to obtain immediate information with respect to whether a firearm can be transferred to an unlicensed person, or whether doing so would be in violation of Section 922 (g) or (n) of Title 18, United States Code, or state law.

2. Who is identified in the NICS system?

The NICS Index contains records provided by local, state, and federal agencies about persons prohibited from receiving firearms under federal law. All records in the NICS Index are considered to be "federally disqualifying records" and will prohibit the transfer of a firearm. Among the records in the NICS system are those including the names of individuals who have been adjudicated as having a mental disability or committed to a mental institution. These terms include an involuntary commitment to a mental institution and commitment for other reasons, such as drug use (please note that involuntary commitment for substance abuse treatment is currently not authorized under New York State Law)

3. Can an individual contest his/her inclusion in the NICS database?

Yes. You may contact OMH if you have been identified in the NICS system as having an involuntary hospitalization in New York, and you believe that this is factually incorrect. To contest your inclusion based on factual error, contact the OMH Help Desk at (518) 474-5554.

4. How do I contact OMH to initiate the certificate of relief application process if I have been disqualified from possessing a firearm based on my hospitalization?

If you have been disqualified for firearm possession based on an involuntary admission to a hospital in New York State, you must contact the NICS Appeals Office, Office of Central Files, Office of Mental Health via mail at 44 Holland Avenue, Albany, New York 12209, via e-mail, or via telephone at (518) 474-5554.

5. What is the Certificate of Relief from Disabilities relating to Firearm Possession?

New York State Mental Hygiene Law Section 7.09(j) gives the Commissioner of Mental Health the power to permit a person who has been disqualified from possessing a firearm based on an involuntary hospitalization in New York State to petition for relief from that civil rights disability. If a certificate of relief from disabilities is issued, then the disqualification from possessing a firearm based on an involuntary hospitalization in New York will be removed from the NICS database.

6. How do I apply for the Certificate of Relief from Disabilities?

To apply for the certificate of relief, you must complete the application (PDF) and submit it to OMH along with all other required documentation. All documentation must be sent via mail. Incomplete applications cannot be considered.


7. What documentation must be submitted to be considered for a Certificate of Relief from Disabilities?

Along with the application (PDF), the applicant for a certificate of relief must also provide the following required documentation.

8. How do I obtain a copy of criminal history information?

To obtain a certified copy of your New York State criminal history information, you must contact DCJS Record Review Unit at (518) 485-7675 or write to the address listed below to request the necessary forms:

New York State Division of Criminal Justice Services
Criminal History Bureau
Record Review Unit – 5th Floor
4 Tower Place
Albany, New York 12203-3764
(518) 485-7675

To obtain a certified copy of your criminal history information from the Federal Bureau of Investigation please visit the following website: www.fbi.gov/hq/cjisd/fprequest.htm. 

The Federal Bureau of Investigation will require a signed cover letter, provided by the FBI, along with proof of identity (set of fingerprints) and payment to be sent to:

FBI CJIS Division - Record Request
1000 Custer Hollow Road
Clarksburg, West Virginia 26306.

You must allow approximately 16-18 weeks for processing, upon receipt by the FBI. Either a no record response or a FBI Identification Record will be mailed to you.

9. Will I be required to undergo a clinical evaluation and risk assessment?

OMH reserves the right to request that the applicant undergo a clinical evaluation and risk assessment as determined by the Commissioner or his/her designee. The NICS Appeals Officer will contact the applicant if a clinical evaluation is required. If it is required, the applicant must have the examination completed within 90 days from the date that the request for the Certificate of Relief was submitted to OMH.

10. Does the granting of a Certificate of Relief from Disabilities automatically qualify a person to purchase a firearm?

No. A Certificate of Relief from Disabilities issued by OMH does not automatically qualify you to purchase or possess a firearm. The Certificate of Relief will only remove the disability based on your psychiatric hospitalization in New York State.

11. If the application for Certificate of Relief from Disabilities is denied, can the applicant re-apply?

Yes. However, if you are denied you may not apply again for a certificate of relief until one year after the date that the written determination of denial is issued.

For Law Enforcement:

1. How does a law enforcement official contact OMH regarding firearm possession?

Law enforcement agencies seeking verification of the identity of an individual identified in the NICS system must contact the

OMH Help Desk at (518) 474-5554. The call will be forwarded to a representative of the NICS Appeals Office who will attempt to verify the identity of the individual in the NICS system by contacting the state psychiatric facility identified in the NICS system.

2. What if a disqualified applicant contests his/her inclusion in the NICS database?

The individual should be directed to contact the OMH Help Desk. A representative will assist the caller in verifying if any episode of involuntary care occurred at a psychiatric center in New York State.

3. Will OMH provide verification for an individual contesting his/her inclusion in the NICS database?

OMH will notify NICS if the NICS Appeals Officer determines that the individual in question was improperly identified by the NICS system.

OMH will advise the individual in question that he/she may apply for a Certificate of Relief from Disabilities if it determines that the individual in question did have an episode of involuntary care in New York.

4. What information do I have to provide to OMH for the verification process?

You should provide your full name and a copy of your social security card, birth certificate, and drivers license. Please do not send original documents.

Additional Resources:

1. Where can I find additional information on NICS?

From this website, you can obtain a copy of the specific laws and OMH regulations that govern the OMH Certificate of Relief from Disabilities process.

2. What if I have questions about the application process?

Questions or comments related to OMH Certificate of Relief from Disabilities process can be directed to the NICS Appeals Officer by e-mail or by phone at (518) 474-5554.

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Exhibit Group D

Exhibit #10 – NYS Police “Field Guide” (September 2013)

Guide to

The New York Safe Act

for

Members of the Division of State Police



Prepared by

The Office of Division Counsel

September, 2013

NY State Police Guide to the Safe Act

September, 2013

Safe Act Introduction and Summary	1
I. Statewide Database	2
II. Assault Weapons	3
Definition of "Assault Weapon"	3
Registration Requirements	4
Restrictions on Transfers	4
Applicable Criminal Charges	4
Effect on Police	5
Serving Police Officers	5
Retired Police Officers	5
Assault Weapon Denial Procedures	6
III. Magazines	7
Capacity	7
New PL 265.36. Unlawful Possession of a Large Capacity Feeding Device	7
Relationship between PL 265.36 and PL 400.00.....	8
Tubular Devices / Curios and Relics	8
New PL 265.37 - Loading with More than 7 Rounds.....	9
Effect on Police	9
IV. Private Sales	11
General Business Law New Article 39-DDD	11
Immediate Family Exemption	11
Potential Charges	11
Effect on Police	11
V. Pistol Permits	12
Recertification Requirement.....	12
Opt Out Forms / Public Disclosure	12
Effect on Police	12

VI.	Mental Hygiene Law - 9.46 Referral.....	13
VII.	New Crimes (Penal Law and General Business Law).....	13
Appendix:	Index of Crimes and Offenses Related to the NY Safe Act	16

INTRODUCTION

The NY SAFE Act, signed into law by Governor Cuomo on January 15, 2013, amended various provision of New York law in relation to firearms, long guns, assault weapons and ammunition. The Act was intended to enhance public safety by:

- Expanding the classification of those weapons considered to be Assault Weapons and restricting their access, possession and transfer.
- Providing safeguards, through the implementation of a new statewide database, to help ensure that individuals who are not qualified to possess certain weapons or ammunition do not obtain access to them.
- Restricting the types of magazines that individuals are allowed to possess and limiting the number of rounds permitted to be loaded in a magazine.
- Extending the requirement of a NICS check, formerly applicable only to commercial sales, to private sales of firearms subject to certain exceptions.
- Requiring those with existing firearms licenses (pistol permits) to renew or recertify these permits every 5 years.
- Establishing several new penal law offenses and enhancing the penalties for existing offenses
- Exempting records relating to the Act from public disclosure and providing all permit holders and applicants with an opportunity to ensure that any county records relating to their individual permit or application will also be exempt from the NY State FOIL provisions.

As with many large legislative initiatives, the SAFE Act has raised questions from members of the field relating to the scope of the Act and its effect on those police officers who will have the responsibility to enforce the various provisions. The purpose of this guide is to provide guidance to police officers regarding the enforcement of the Safe Act's provisions.

I. THE STATEWIDE DATABASE

The SAFE Act requires the creation of a statewide license and record database¹, through which records will be checked in order to determine whether or not a particular applicant or licensee is or remains qualified to possess a firearm or to register an Assault Weapon.

Disqualifiers will include traditional criteria, such as not being convicted of a crime or serious offense, and new criteria established by the Act, such as expanding the situations where a court must suspend or revoke a subject's license pursuant to an Order of Protection or where the person has been the subject of a mental health professional's determination that he or she is likely to engage in dangerous behavior.

Database records will be checked when the subject applies for a firearm's license or when he or she seeks to register an Assault Weapon. The system will also continually run checks after the application or registration process and will detect if a licensee or registrant subsequently becomes unqualified.

The database will be maintained by the State Police and records assembled or collected for purposes of inclusion in the database are exempt from public disclosure laws. It is currently being assembled and is expected to be operational in 2014.

EFFECT ON POLICE (Database)

Other than the personnel assigned to build and input data, there is no direct effect on law enforcement personnel. However, there will be an indirect effect in those cases where the applicant or registrant is disqualified because police officers may be assigned to secure weapons owned or possessed by a person who does not meet the qualification requirements.

The Statewide Database is the common thread in all of the Safe Act provisions. All of the eligibility checks for the various parts of the act will utilize this database.

¹ New Penal Law section 400.02.

II. ASSAULT WEAPONS

1. **Definition:** The Safe Act redefined the term “Assault Weapon” and created registration requirements for those who lawfully owned them before the enactment of the statute.

As of January 15, 2013, the term “Assault Weapon” has been redefined as:²

- A semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the following military characteristics:
 - a. Folding or Telescoping Stock
 - b. Protruding Pistol Grip
 - c. Thumbhole Stock
 - d. Second Handgrip or Protruding Grip that can be held by non-shooting hand
 - e. Bayonet Mount
 - f. Flash Suppressor
 - g. Muzzle Brake
 - h. Muzzle Compensator
 - i. A threaded barrel designed to accommodate the above
 - j. Grenade Launcher
- A semiautomatic shotgun having at least one of the following characteristics:
 - a. Folding or Telescoping Stock
 - b. Thumbhole Stock
 - c. Second Handgrip or Protruding Grip that can be held by non-trigger hand
 - d. Fixed magazine capacity in excess of seven rounds
 - e. An ability to accept a detachable magazine
- A semiautomatic pistol, able to accept a detachable magazine and has at least one of the following characteristics:
 - a. Folding or Telescoping Stock
 - b. Thumbhole Stock
 - c. Second Handgrip or Protruding Grip that can be held by non-trigger hand
 - d. Capacity to accept an ammunition magazine that attaches to the pistol outside the pistol grip
 - e. A threaded barrel capable of accepting a barrel extender, flash suppressor, forward hand grip or silencer
 - f. A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the non-trigger hand without being burned
 - g. A manufactured weight of fifty ounces or more when the pistol is unloaded

² There are some exceptions to this definition. For example a rifle, shotgun or pistol that is manually operated by bolt, pump, lever or slide action, an antique firearm, and those firearms, rifles and shotguns made at least 50 years ago are not classified as Assault Weapons. Officers seeking more specific information on these and other exceptions should check the information on the Internet at <http://www.governor.ny.gov/nysafeact/gun-reform> or contact the state police Safe Act hotline at 1-855-LAW-GUNS.

2. Registration Requirements

Anyone who lawfully possessed a weapon on or before January 15, 2013, that has been redefined as an Assault Weapon by the Act, may keep that weapon provided the person registers the weapon by April 15, 2014. The registration process is a quick, simple and free procedure that can be conducted over the Internet. The web site is

<https://firearms.troopers.ny.gov/safeact/welcome.faces>.

The registration for an assault weapon must be renewed every 5 years.

3. Restrictions on Transfers

Once registered, the person who registered it may keep the assault weapon for life, but may not transfer it to another unless the person he or she transfers it to is exempt from the law. There are no exceptions that allow a person to transfer an Assault Weapon to an immediate family member. Therefore, the owner of a registered assault weapon may only transfer it to a police officer, a firearms dealer or to a person in another state where possession of the weapon would be lawful.

4. Applicable Criminal Charges: (Chargeable after April 15, 2014)

Applies when a person lawfully possessed the assault weapon before January 15, 2013.

Failure to Register an Assault Weapon / PL 400.00 (16-a) (c) (class A misdemeanor)

A person who knowingly fails to register by April 15, 2014, may be charged with PL section 400.00 (16-a) (c) / “Knowingly Failing to Register an Assault Weapon,” a class A misdemeanor. This charge applies to a person who lawfully possessed the weapon prior to the Safe Act, knew that the weapon was of the type that must be registered and failed to register it.

Applies when the person did not lawfully possess the assault weapon before January 15, 2013.

Criminal Possession of a Weapon 3rd / PL 265.02 (7) (class D felony)

The only assault weapons that may be registered, and therefore, are exempt from the firearms laws are those that were lawfully possessed by the person before the Safe Act became law on January 15th, 2013. Therefore, a person who acquired an assault weapon after January 15th is subject to full criminal liability for possessing the weapon unless he or she is covered by one of the exemptions in PL 265.20.

EFFECT ON POLICE (Assault Weapons)**A. Serving Police Officers**

While police officers may continue to legally purchase and possess Assault Weapons and Large Capacity Ammunition Feeding Devices under the former police exemption in Penal Law 265.20 (a) (1), this exemption only applies when the officer is an active police officer. Once a police officer retires, he or she is prohibited from possessing an Assault Weapon or Large Capacity Ammunition Feeding Devices unless he or she 1) is eligible to register it in the same manner as anyone else (i.e. it was made unlawful by the Safe Act, acquired by the officer before 1/15/13 and is registered by 4/15/14), or 2) meets the definition of a “Qualified Retired New York or Federal Law Enforcement Officer.”

If the weapon was acquired by the officer after January 15, 2013, and the officer does not meet the requirements as a “Qualified Retired” officer (set forth below), he or she will not be able to possess the weapon while retired because there would be no authority to register an Assault Weapon acquired after that date. Likewise, if, by April 15, 2014, an officer had not registered an Assault Weapon that he or she possessed on or before January 15, 2013, and he or she does not qualify as a retired officer as set forth below, the officer would have lost the opportunity to keep the weapon after retirement.

B. Qualified Retired Enforcement Officers

A retired officer who meets the definition of a Qualified Retired New York or Federal Law Enforcement Officer may possess a registered assault weapon or large capacity magazine that would otherwise be unlawful if all of the following conditions are met:

1. The officer **must be retired** and not merely separated from service.
2. The weapon or magazine must have been issued to or **purchased by the officer** in the course of his or her official duties.
3. The device must be **personally owned** by the officer at the time of retirement or he or she must own “**comparable replacements** for such devices;” and,
4. The officer must have been **qualified by his or her agency** in the use of the weapon within the previous year before he or she retired; and,
5. The retired officer must have qualified again within 3 years of retirement and within every 3 years thereafter. (If the officer had been retired for 18 months or more on January 15, 2013, he or she has until July 15, 2014 to meet these post retirement qualification standards. However, he or she must still have been qualified by the agency in the use of the weapon before retirement.)

C. Assault Weapon Denial Procedures – Law Enforcement Responsibilities

In order to register an Assault Weapon, a person must be eligible to possess a rifle or shotgun. During the registration process, checks will be run through federal and state databases to ensure that the person who is attempting to register is not prohibited from possessing a weapon. If a person fails this check, notice will be sent to the local law enforcement agency having jurisdiction so that the weapon(s) may be recovered from the individual who is determined to be ineligible.

If the person is determined to be ineligible because of a mental health disqualifier or due to an order of protection, the statute provides that he or she will be afforded the opportunity to arrange for the lawful transfer or sale of that weapon. The law enforcement agency assigned will secure the weapon for safekeeping until the person has made these arrangements in accordance with the procedure set forth in Penal Law 400.05 (6). If the subject fails to make these arrangements, the weapon automatically becomes a nuisance weapon and must be destroyed or rendered useless for its intended purpose.

If the person is determined to be ineligible due to a criminal conviction, the local law enforcement agency assigned will recover the weapon using whatever procedures are currently in place for members of that agency upon discovering that a convicted felon is unlawfully possessing a weapon. In such case, the weapon is automatically classified as a nuisance weapon and the weapon will be destroyed. Unlike the other situations, possession of any rifle or shotgun by a person who has been convicted of a felony or serious offense is a crime for which an arrest may be made. As such, there is no opportunity for the person to arrange for a lawful sale or transfer of the weapon.

A person who is denied due to a mental health disqualifier will have the opportunity to sell or transfer the weapon to a person who may lawfully possess it, such as a dealer.

III. MAGAZINES

1. Capacity

Under the previous law, a magazine purchased before September 13, 1994 was specifically exempted from the definition of large capacity ammunition feeding device in PL 265.00 (23). As such, a person with a pre-94 magazine could not be charged with the class D felony of Criminal Possession of a Weapon in the third degree under PL 265.02 (8). This exemption has been removed by the Safe act.

However, the exemption has been relocated by the Safe Act and is now found in the body of PL 265.02 (8) itself. It will now only exempt a person from criminal liability if the person acquired the magazine before January 15th, 2013. In other words, if someone obtains a pre-94 magazine now, of the same type that was formerly lawful under the old exemption, or obtained it anytime after the Safe Act became law on January 15th, that person could be charged with the class D felony under PL 265.02 (8) because the pre-94 exemption would not apply to him or her.

Possession of some pre-94 magazines may not be felonies, but they are still illegal under the Safe Act.

It is important to understand that the existence of the exemption in amended PL 265.02 (8) does not mean that possession of a pre-94 magazine with a capacity of more than 10 rounds is still lawful for those who legally possessed them before January 15, 2013. It is not. By taking the exemption out of the definition in 265.00 (23) and moving it to PL 265.02 (8), the legislature merely established a system that imposes a lesser penalty on those who retained their pre-94 magazines and did not modify them so that their capacity is 10 rounds or less. To accomplish this, the Legislature created new Penal Law section 265.36 set forth below.

2. New Penal Law section 265.36 / Unlawful Possession of a Large Capacity Ammunition Feeding Device / class A misdemeanor

This reduced charge only applies to those who, before January 15th, 2013, lawfully possessed an ammunition feeding device having a capacity of more than 10 rounds. Penal Law section 265.36 prohibits the knowing possession of these previously exempt magazines (manufactured before 1994 having a capacity of more than 10 rounds). A violation of this section is a class A misdemeanor.

But ... there's a catch...

If a person 1) **mistakenly believed** that possession of a pre-94 magazine was still legal; and if, 2) he or she either surrenders the magazine or lawfully disposes of it within 30 days after being notified by law enforcement or a county official that the magazine is unlawful, he or she may not be charged with this offense. A person may lawfully dispose of the device by:

1. Transferring it to a dealer; or,
2. Transferring it to a person who is exempt from the statute, such as a police officer; or
3. Permanently modifying it to reduce its capacity to 10 rounds or less.

3. Relationship between new Penal Law section 265.36 and amended Penal Law section 265.00 (22) (h).

Although new Penal Law section 265.36, which became effective in March of 2013, indicates that a person could be charged with possession after the 30 day warning period has expired, new paragraph (h) of Penal Law section 265.00 (22) creates a grandfather provision that allows people to lawfully possess these magazines until January 15, 2014:

*An individual who transfers any such large weapon or large capacity ammunition feeding device to an individual inside New York state without complying with the provisions of this paragraph shall be guilty of a class A misdemeanor **unless such large capacity ammunition feeding device, the possession of which is made illegal by the chapter of the laws of two thousand thirteen which added this paragraph, is transferred within one year of the effective date of [the Safe Act].***

Because of this provision, new section 265.36 is not enforceable until after January 15, 2014. Even then, a person possessing one of these magazines should only be arrested if the police officer can show that the person knew that the magazine was unlawful. If the person has a reasonable, mistaken belief that the pre-94 magazine was lawful, he or she is entitled to the 30 day grace period with which to transfer it.

4. Certain Tubular Devices / Curios and Relic Exemptions

Possession of an ammunition feeding device that has a capacity of more than 10 rounds is still legal under the Safe Act if:

- a. It is an attached **tubular device** designed to accept, and capable of operating only with .22 caliber rimfire ammunition; or,
- b. It qualifies as a **curio or relic**. In order for a magazine to be a curio or relic it must:
 - i. Have been manufactured at least 50 years prior to the current date; and,
 - ii. Is capable of being used exclusively in a weapon that was manufactured at least 50 prior to the current date; and,
 - iii. the possessor is not prohibited from possessing a firearm; and,
 - iv. the magazine is registered with the State Police

Curios and relics may still be legally purchased and brought into the State but they must be registered within 30 days of their transfer into New York. The restrictions on transfers, applicable to Assault Weapons, do not apply to relics or curios.

5. Possessing a magazine loaded with more than 7 rounds / New PL section 265.37

Although a person may continue to possess magazines *with a capacity of* 10 rounds, the SAFE Act prohibits having more than 7 rounds loaded in any particular magazine. New Penal Law section 265.37 provides that it is unlawful for a person to knowingly possess an ammunition feeding device where such device contains more than seven rounds of ammunition.

a. Exception to the 7 Round Rule: Range and Sporting Events

The Safe Act added a new subdivision 7-f to the exemptions in PL 265.20 to authorize the possession and use of a magazine containing 8, 9 or 10 rounds at a firing range, at a collegiate, Olympic or target shooting competition approved by the NRA, or at an organized match sanctioned by the International Handgun Metallic Silhouette Association.

6. Penalties (possessing more than 7 rounds in magazine) PL 265.37

- If the violation occurs **within the home** of the person:
 - 1st offense = violation, subject to \$200 fine
 - Subsequent offense = class B misdemeanor / subject to \$200 fine / up to three months imprisonment
- If the violation occurs in **any other location**:
 - 1st offense = class B misdemeanor / subject to \$200 fine / up to six months imprisonment
 - Subsequent offense = class A misdemeanor / up to one year imprisonment

EFFECT ON POLICE (Magazine Laws)

A. Police exemptions

Police officers remain exempt from the provisions of 265.02 and may continue to possess large capacity ammunition feeding devices for as long as they are serving police officers. In addition, two new exemptions have been created to exempt police officers from the provisions of PL 265.36 (the new reduced charge for pre- 94 magazines) and PL 265.37 (loading with more than 7 rounds).

B. Visiting police officers from other states

Police officers from other states who are conducting business within New York have been exempt from the laws relating to the possession of firearms and magazines under PL 265.20 (11). This exemption also covers the new crimes and offenses created by the Safe Act.

C. Retired police exemption

For a discussion of the retired police exemption, see page 5.

D. Right to check and inspect magazines v. firearms

Absent some indication of criminal activity, there is no right to inspect the contents of a magazine to ensure that it meets the requirements under the Safe Act. If an officer has probable cause to believe that a particular magazine is unlawful, he or she may seize and inspect it. If there is founded suspicion of criminal activity, the officer may ask for consent to check the magazine. However, the mere existence of a magazine, which may or may not be legal, does not provide probable cause to believe that any law is being broken.

If the weapon is one for which a permit is required, police will be justified in checking the permit to ensure that the person lawfully possesses the firearm. If a permit cannot be produced, the officer would be legally justified in seizing the firearm and conducting an inventory of its contents. In this case, the inventory would include checking the magazine in order to account for each round. However, if the person produces a permit and there are no indications of unlawful conduct, an inspection of the magazine would be unnecessary. In this case, the weapon should be secured temporarily, in the same condition as it was found, for the duration of the stop and returned to the motorist at the conclusion of the encounter.

Unless there is probable cause to believe the law is being violated, there is no justification for checking a magazine to determine whether or not it contains more than 7 rounds.

IV. PRIVATE SALES

The Safe Act extended the requirement of a NICS check (National Instant Criminal Background Check System), which was previously limited to commercial weapons sales, to private sales through a new Article 39-DDD of the General Business Law (GBL).

1. General Business Law Article 39-DDD

GBL Article 39- DDD requires that all private sales of firearms, rifles or shotguns be conducted through a licensed importer, manufacturer or dealer. Before any private sales may be made, a NICS check must be conducted by a dealer on the purchaser. While a dealer is not required to facilitate a private sale, if a dealer chooses to do so, he or she must create and maintain records relating to private sales to prove that the background checks were conducted. These records may be inspected by a police officer and are not subject to public disclosure under the FOIL provisions. The Safe Act provides that a dealer may charge up to \$10 for facilitating these private transactions.

2. Immediate Family Exemption

There is an exception to the requirement of a background check for transfers of weapons between immediate family members. The term “immediate family members” is limited by statute to:

- Spouses
- Domestic Partners
- Children
- Step-children

3. Potential Charges

GBL Section 898 (6) / Unlawful Private Sale of a Firearm, Rifle or Shotgun.

A knowing violation of these new provisions of the General Business Law, regulating the private sale of firearms, is a class A misdemeanor. The enforceable subdivision is subdivision (6) of GBL section 898.

EFFECT ON POLICE

There is no exemption applicable to serving or retired law enforcement officers from these new provisions regulating private sales. Unless the officer transfers the weapon to an immediate family member, the sale must be made through a dealer and the purchaser must submit to a NICS check.

Police are not exempt from the requirements relating to private sales of firearms

V. PISTOL PERMITS

1. Recertification Process

The Safe Act has amended section 400.00 of the Penal Law to require that all pistol permits be renewed, or recertified, every 5 years beginning in January of 2014. Every existing permit holder will be required to recertify using a quick, free process that will begin in early 2014 on a staggered basis. Failure to recertify acts as a revocation of the license by operation of law.

During the renewal process, the database will be checked to ensure that the licensee is still qualified to possess the weapon. Detailed recertification procedures are currently being developed and will be explained to all permit holders in 2014.

2. Pistol Permit records to be confidential / “Opt Out” Forms

All state records relating to the Safe Act, including pistol permit renewal records, are specifically exempt from disclosure by statute. In addition, county permit records will not be subject to disclosure if the permit holder files an “Opt Out” form with the county. This form is available at <http://www.nysafeact.com> or <http://www.troopers.ny.gov/optoutfoil>.

3. Becoming ineligible at later time results in revocation

If a licensee at any time becomes ineligible to hold a license, the license is considered to be revoked under an amendment to PL 400.00 (11). In such case, the person is required to surrender his or her license to the appropriate licensing official and any and all firearms, rifles or shotguns owned or possessed by the person must be surrendered to a law enforcement agency.

EFFECT ON POLICE

Removal of weapons not surrendered

If the license and weapons are not surrendered, they will be removed by a police officer and declared a nuisance. At that point, the person would lose the ability to lawfully transfer the weapon.

If a person becomes ineligible to hold a pistol permit, the Safe Act requires the person to surrender all firearms to police, including all rifles and shotguns for which no license or registration is required.

VI. MENTAL HYGIENE LAW - 9.46 REFERRAL

The Safe Act added a new section 9.46 to the Mental Hygiene Law that requires a mental health professional to report, as soon as practicable, to his or her director of community services, any person under his or her care if the professional believes such person “is likely to engage in conduct that would result in serious harm to self or others.”

The director of community services must, if he or she agrees with this determination, report the subject person to DCJS personnel, who will make an initial screening to determine if the subject potentially has a NYS-issued firearms license or has applied for one. If so, DCJS will notify the State Police to confirm the existence of the license and the licensing authority will be notified so they can make a determination as to whether to suspend or revoke the subject’s license.

The licensing authority, and the appropriate local law enforcement agency, will handle the suspension and the recovery of any weapons in the same manner as they do now in the event the licensing authority revokes a firearms license.

VII. NEW CRIMES / Penal Law and General Business Law

Unlawful Possession of a Large Capacity Ammunition Feeding Device / PL 265.36

After January 15, 2014, a person who knowingly possesses a magazine having a capacity of more than 10 rounds, that he or she lawfully possessed before the Safe Act, and which was previously exempt under the former law (manufactured before September of 1994) will be committing a class A misdemeanor. This crime may not be charged until after January 15th of 2014 because those who possess these devices have one year from the enactment of the Safe Act to transfer, dispose of, or permanently modify the magazines to a capacity of 10 rounds or less. This criminal statute would only apply to a person who knows that his or her magazine is illegal. The Safe Act requires police to provide a 30 day warning period to a person who reasonably, but mistakenly, believes that his or her magazine is lawful.

Unlawful Possession of Certain Ammunition Feeding Devices / PL 265.37

The Safe Act created a new crime that prohibits the possession of any magazine when that magazine is actually loaded with more than 7 rounds. The penalty depends on the location of the violation. If a person violates this statute in his or her own home, the offense will be punished as a violation for a first offense and as a class B misdemeanor for any subsequent offense. If the violation takes place in any other location, the offense will be punished as a class B misdemeanor for a first offense and as a class A misdemeanor for any subsequent offense. This law is currently effective.

Transferring a firearm, rifle or shotgun outside the provisions of GBL 39-DDD – requiring a NICS check for private sales.

Transferring a weapon to another person who is not an immediate family member is a crime under General Business Law section 898 (6) unless the transfer is conducted through a gun dealer who conducts a NICS check on the purchaser. A violation of this law, which is currently effective, will be punished as a class A misdemeanor.

Assault 2d / Injury to child by firearm / Penal Law 120.05 (4-a)

The Safe Act amended PL 120.05 (Assault 2nd), by adding a new subdivision 4-a, to provide that recklessly causing physical injury to a child under 18 by intentionally discharging a rifle, shotgun or firearm constitutes Assault 2nd (a class D felony). This law is currently effective.

Aggravated Murder / Murder 1st / Penal Law 125.26 (1) (a) (ii-a) / 125.27 (1) (a) (ii-a)

The Act extend the class of victims for which Aggravated Murder or Murder 1 may be charged to include, in addition to police, peace and correction officers, any other individual, such as a firefighter, EMT, paramedic, etc., who is murdered while engaging in his or her emergency response duties. This law is currently effective.

Possession of a rifle, shotgun or firearm on school grounds or on a school bus without written authorization of the school. / Penal Law 265.01-a

Subdivision (3) has been deleted from Penal Law section 265.01, relating to possessing a rifle, shotgun or firearm on school property. That law is now in a new Penal Law section, 265.01-a. The statute has the same language and elements as former subdivision (3), but has been elevated to a class E felony. This law is currently effective.

Criminal Possession of a Firearm / Penal Law 265.01-b

A new Penal Law section 265.01-b entitled, “Criminal Possession of a Firearm,” (a class E felony) may be charged when a person possesses any firearm (even unloaded) and does not have a permit or the benefit of an exemption listed in section 265.20. Subdivision (2) of this section, relating to the failure to register an assault weapon, is negated by an amendment to PL section 265.20 (a) (3) which provides that failing to register may only be punished as a misdemeanor “notwithstanding any other section of this title.” As both sections are within Title P of the Penal Law, 265.01-b (2) is therefore ineffective. Subdivision (1) is currently effective.

Straw Purchases / Penal Law 265.17

The Safe Act amended section 265.17 of the Penal Law to increase the penalty for straw purchases from a class A misdemeanor to a class D felony. Under the new amendments, this section is violated when a person actually purchases or disposes of a firearm, rifle or shotgun to another who he or she knows is disqualified from possessing one. The language of the former law prohibiting the “attempt” to purchase the weapon has been removed. Accordingly, an “attempt” to commit this crime would now be charged one degree lower, as a class E felony. This law is currently effective.

Drug Trafficking Felony / Penal Law 10.00 (21)

A new subdivision 21 has been added to the Penal Law to define the term “Drug Trafficking Felony.” A person who commits a drug trafficking felony while possessing an illegal loaded firearm will be subjected to harsher punishment under the Safe Act (see PL 265.19 below). A “drug trafficking felony” includes any of the following crimes: Criminal Sale of a Controlled Substance (any degree), Using a Child to Commit a Controlled Substance Offense (PL 220.28), Criminal Sale of a Controlled Substance in or near School Grounds (PL 220.44), Unlawful

Manufacture of Methamphetamine in the first or second degree (PL 220.74 / 220.75), or Operating as a Major Trafficker (PL 220.77). This law is currently effective.

Aggravated Criminal Possession of a Weapon / Penal Law 265.19

A new section 265.19 to the Penal Law entitled “Aggravated Criminal Possession of a Weapon,” a class C felony, may be charged when a person unlawfully possesses a loaded firearm, outside of his or her home or business, and at the same time commits a Violent Felony offense or a Drug Trafficking Felony as described above. This law is currently effective.

Safe Storage of Rifles, Shotguns and Firearms / Penal Law 265.45

New PL section 265.45 prohibits a person from storing a rifle, shotgun or firearm, that is not securely locked in a safe or other secure container when such person resides with another who he or she knows is prohibited from possessing a firearm due to a felony conviction, an involuntary commitment, an order of protection or a conviction for a domestic violence misdemeanor listed in CPL 370.15. A violation of this law is a class A misdemeanor. This law is currently effective.

Aggravated Enterprise Corruption / Penal Law 460.22

The Safe Act added a new Penal Law section 460.22, Aggravated Enterprise Corruption, an A-1 felony, to be charged when a person commits the existing crime of Enterprise Corruption (PL 460.20) and when the underlying crimes committed are armed felonies. This law is currently effective.

Appendix: INDEX OF CRIMES AND OFFENSES RELATED TO THE NY SAFE ACT

Crime or Offense	Chargeable Section	Class	Chp	Eff Date
Violating the provisions of Gen Bus. Law, Art 39 – DDD Private Sales	GBL 898 (6)	A Misd	17	3/15/13
Criminal Facilitation for providing a community gun under circumstances that the person believes it probable that he or she is rendering aid to a person who intends to commit a crime. The element of “conduct” in the statutes may be fulfilled by providing a community gun, defined in this section.	Whatever the appropriate underlying facilitating section is	Varies	31	3/15/13
Assault 2d – by recklessly causing physical injury to a child under 18 by intentionally discharging a firearm , rifle or shotgun.	PL 120.05 (4-a)	D Felony	32	3/15/13
Adds job titles of first responders to the list of murder victims for which Aggravated Murder and Murder 1 may be charged.	PL 125.26 / PL 126.27	A-I Felony	35 36	3/15/13
Unlawful transfer of previously lawful Assault Weapon or Large Capacity Ammunition Feeding Device within New York State (after a one year grace period)	PL 265.00 (22) (h)	A Misd	37	1/15/13 ¹
Criminal Possession of a Weapon on School Grounds	PL 265.01-a	E Felony	41	3/15/13
Criminal Possession of a Firearm – possessing any firearm without a license or exemption.	PL 265.01-b (1)	E Felony	41-a	3/15/13
Possession of an unloaded firearm while committing a drug trafficking felony ² (added to Crim Possession of a Weapon 4 th)	PL265.02 (9)	D Felony	41-b	3/15/13
Possession of an unloaded firearm and while committing a violent felony offense defined in PL 70.02 (1) (added to Crim Possession of a Weapon 4 th).	PL 265.02 (10)	D Felony	41-b	3/15/13
Criminal Purchase or disposal of a weapon. Providing or disposing of a firearm , rifle or shotgun to one he or she knows is ineligible to lawfully possess same. <i>Note: Criminal purchase of a weapon has been raised from a class A misdemeanor to a class D felony. “Attempts” are no longer chargeable under this section.</i>	PL 265.17 (3)	D Felony	43	3/15/13
Aggravated Criminal Possession of a Weapon . Violated when a person commits Crim Poss Weapon 2 nd and also commits any violent felony offense or a drug trafficking felony in the same criminal transaction.	PL 265.19	C Felony	45	3/15/13

Unlawful Possession of a Large Capacity Ammunition Feeding Device ³ . - Only applies to those previously exempt large capacity magazines (made before September of 1994 and more than 10 round capacity) when the person acquired and possessed it before the enactment of the Safe Act (1/15/13). If these conditions do not apply, the person should be charged with Criminal Possession of a Weapon 3 rd (PL 265.02 (8)).	PL 265.36	A Misd – <i>see note 4 for special charging restrictions</i>	46-a	3/15/13 – but not enforceable until 1/15/14 ⁴
Unlawful Possession of Certain Ammunition Feeding Devices. (a/k/a Being loaded with more than 7 rounds). No magazine may contain more than 7 rounds, regardless of its capacity unless the person is exempt or at a range or sporting event.	PL 265.37	B Misd – ⁵ <i>see note below</i>	46-a	3/15/13
Safe Storage of Rifles, Shotguns and Firearms, requiring a person who lives with another and knows the other is disqualified from possessing a firearm under certain federal provisions, to maintain the weapon securely	PL 265.45	A Misd	47	3/15/13
Knowingly Failing to Register an Assault Weapon – This section applies when a person failed to register an Assault Weapon, that was lawfully acquired and possessed by such person on or before 1/15/13, and is the type of weapon that was made an Assault Weapon by the Safe Act.	PL 400.00 (16-a) (c)	A Misd	48	4/15/14

¹ The effective date of this section is actually January 15, 2013, but since the statute PL 265.00 (22) (h) does not allow for criminal sanctions until on year after the effective date, a transfer under this section is not unlawful until after January 15, 2014.

² A drug trafficking felony is defined in new Penal Law section 10.00 (21) as any violation offenses; PL 220.28 (Use of a Child in a Controlled Subst Offense); PL 220.34, 39, 41, 43 (Crim Sale of Controlled Subst in the 4th, 3rd, 2nd and 1st degrees); PL 220.44 (Crim Sale Contr Subst on or near School Grounds); PL 220.75 and 220.75 (unlawful Manufacture of Methamphetamine 2nd, 1st degree); and PL 220.77 (Operating as a Major Drug Trafficker).

³ An individual who reasonably believes that the magazine is legal has 30 days after being told that it is illegal by a police officer to dispose of the device.

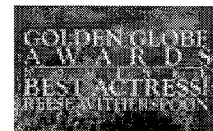
⁴ The effective date of this part of the Safe Act is 3/15/13 but PL 265.00 (22) (h) provides a person with one year to transfer the magazine within NY State. Therefore, police officers should not charge this section until 1/15/14.

⁵ If the possession occurs in the person's home, the offense is only a violation with a fine of \$200 for a first offense and a class B misdemeanor for a subsequent offense. If the possession occurs in any other place the offense is punished by a class B misdemeanor for a 1st offense and as a class A misdemeanor for subsequent offenses.

Montgomery vs. Cuomo

Exhibit Group D

Exhibit #11 – NY Times Article (October 19, 2014)

The New York Times<http://nyti.ms/1sX2cYD>

N.Y. / REGION

Mental Health Issues Put 34,500 on New York's No-Guns List

By ANEMONA HARTOCOLLIS OCT. 19, 2014

A newly created database of New Yorkers deemed too mentally unstable to carry firearms has grown to roughly 34,500 names, a previously undisclosed figure that has raised concerns among some mental health advocates that too many people have been categorized as dangerous.

The database, established in the aftermath of the mass shooting in 2012 at the Sandy Hook Elementary School in Newtown, Conn., and maintained by the state Division of Criminal Justice Services, is the result of the Safe Act. It is an expansive package of gun control measures pushed through by the administration of Gov. Andrew M. Cuomo. The law, better known for its ban on assault weapons, compels licensed mental health professionals in New York to report to the authorities any patient "likely to engage in conduct that would result in serious harm to self or others."

But the number of entries in the database highlights the difficulty of America's complicated balancing act between public safety and the right to bear arms when it comes to people with mental health issues. "That seems extraordinarily high to me," said Sam Tsemberis, a former director of New York City's involuntary hospitalization program for homeless and dangerous people, now the chief executive of Pathways to Housing, which provides housing to the mentally ill. "Assumed dangerousness is a far cry from actual dangerousness."

Similar laws in other states have raised the ire of gun rights proponents, who worry that people who posed no threat at all would have their rights

infringed. Mental health advocates have also argued that the laws unnecessarily stigmatized people with mental illnesses.

Because the names in New York's database and the circumstances of their cases are private, it is impossible to independently determine whether the people in it are truly dangerous.

The database figures were obtained by The New York Times through a Freedom of Information Law request.

Gun control supporters argue a wide net is appropriate, given the potentially dire consequences.

Even if just one dangerous person had a gun taken away, "that's a good thing," said Brian Malte, senior national policy director of the Brady Campaign To Prevent Gun Violence. The National Rifle Association of America favors a separate "process of adjudication" to make sure that "these decisions are not being made capriciously and maliciously," Andrew Arulanandam, a spokesman, said.

John Tauriello, deputy commissioner and counsel for the state Office of Mental Health, said the figure must be evaluated in the context of the magnitude of New York's mental health system, to which 144,000 people were admitted in 2012 for treatment in community hospitals, private psychiatric hospitals or state-operated psychiatric centers.

"It sounds really reasonable if you know the size of the system," Mr. Tauriello said.

Mental health professionals and advocates point out, however, the vast majority of people with mental illnesses are not violent. Accurately predicting whether someone will be violent, they said, is also a highly fraught process.

Under the 2013 law, the reports prepared by doctors, psychologists, nurses and social workers are first sent to county officials. If they agree with the assessments, the officials then input the names into the state database. The information is retained for five years. If the authorities find a person in the database has a gun permit — necessary to purchase a handgun in New York — they are required to revoke the license and seize any guns. The people

in the database are barred from obtaining a permit until their names are purged.

Among the people named in the database, fewer than 300 were found to have a permit. State officials said they did not know how many guns were subsequently seized from them.

Under the 2013 law, New York is one of the most restrictive states in the country in terms of mental health and firearms.

Under federal and most state laws, people with serious mental illnesses lose their gun rights only if they have been involuntarily committed to a mental health center, or have been legally designated as mentally ill or incompetent; both relatively rare occurrences. A small number of states, including California, Connecticut, Illinois, Maryland and New York, have stricter criteria for people with serious mental health issues to purchase and possess firearms.

New York's law gives county officials the responsibility of reviewing the reports from mental health workers, ostensibly providing an added layer of oversight. But several said in interviews that they had little capacity to independently confirm whether the finding that a patient was dangerous was justified.

The way the law has played out, local officials said, frontline mental health workers feel compelled to routinely report mentally ill patients brought to an emergency room by the police or ambulances. County health officials are then supposed to vet each case before it is sent to Albany. But so many names are funneled to county health authorities through the system — about 500 per week statewide — that they have become, in effect, clerical workers, rubber-stamping the decisions, they said. From when the reporting requirement took effect on March 16, 2013 until Oct. 3, 41,427 reports have been made on people who have been flagged as potentially dangerous. Among these, 40,678 — all but a few hundred cases — were passed to Albany by county officials, according to the data obtained by The Times.

As of Saturday, the state updated the database to 42,900 reports, and said that roughly 34,500 of those were unique individuals. The rest of the

names were duplicates because people had been reported more than once.

Kenneth M. Glatt, commissioner of mental hygiene for Dutchess County, said that at first, he had carefully scrutinized every name sent to him through the Safe Act. But then he realized that he was just “a middleman,” and that it was unlikely he would ever meet or examine any of the patients. So he began simply checking off the online boxes, sometimes without even reviewing the narrative about a patient.

“Every so often I read one just to be sure,” Dr. Glatt, a psychologist, said. “I am not going to second guess. I don’t see the patient. I don’t know the patient.” He said it would be more efficient — and more honest — for therapists to report names directly to the Division of Criminal Justice Services, which checks them against gun permit applications.

On a recent Wednesday, Dr. Glatt logged into the system and up popped the names of people being reported — 16 since he last looked three days before.

Among the newest cases was a patient who had threatened to kill his partner. “Becomes aggressive and unpredictable, has history of noncompliance with medications,” the narrative said.

Two patients had attempted suicide with guns. Another “is exhibiting manic behavior,” the note said. It added that the patient was “not sleeping in the past few days, throwing lit cigarettes and matches around the house,” and had “a history of fire setting.”

Still one more involved a man who had threatened a housing office worker if he was not helped immediately and was so agitated that it took six police officers to bring him into the emergency room.

After the names are entered into the database, they are compared against gun permit records. Since the law went into effect, state officials have found 278 matches, with the largest number, 36, in Monroe County, followed by 17 in Westchester, 16 in Suffolk and 14 in Dutchess.

Several mental health experts said the data obtained by The Times renewed their fears that the reporting requirement would discourage patients from seeking help.

“The threshold for reporting is so low that it essentially advertises that psychiatrists are mandatory reporters for anybody who expresses any kind of dangerousness,” said Dr. Mark J. Russ, director of acute care psychiatry at Zucker Hillside Hospital in Glen Oaks, Queens, which has filed many reports to the state.

Another concern is the possibility that the database might be used for other purposes or could contain a mistaken identity. State officials, however, emphasized that only a small number of programmers and administrators have access to the entire database, while others, like law enforcement or licensing officers, see only what they need to make sure the identifications match individual gun permit applications.

The Cuomo administration initially refused The Times’s request for data on the program and rebuffed a public records request, turning over limited information only after an appeal process.

The overwhelming majority of reports from mental health professionals are coming from hospitals — often community hospitals — with an emergency room and inpatient psychiatric services, according to several county officials. Relatively few came from either outpatient mental health clinics or private therapists, they said. The typical diagnoses are schizophrenia, psychosis or major depression.

In interviews last week, state officials said they believed the law had focused on the right group of people. The approach prescribed in the law “is common sense and saves lives,” Melissa DeRosa, a spokeswoman for the governor, said.

While the county-level review of the names might not be a perfect system, state officials said, it at least provided a check against flagrantly undocumented referrals to the database. Not only that, they said, but county officials in smaller upstate communities might know the people being reported and be able to make informed judgments about them.

Despite the breadth of the law, significant loopholes remain. Outside of New York City, permits are not required to buy long guns, so nothing would stop someone in the database from buying a shotgun, for example, after

being released from a hospital. Also, it is unclear exactly how the process for confiscating someone's guns is enforced. And law enforcement officials may not even be aware of all of the guns someone owns.

Patients can challenge the revocations of their gun permits in court, and at least one has: a man in Otsego County, in central New York, who lost his gun license after being admitted to a hospital because he had threatened to harm himself, according to court papers. He also said he had accidentally exposed himself to a young girl and was racked with guilt. The county judge ruled the license could be revoked.

Susan C. Beachy and Alain Delaquerière contributed research.

A version of this article appears in print on October 19, 2014, on page A1 of the New York edition with the headline: Mental Issues Put 34,500 on New York No-Guns List.

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Exhibit Group D

Exhibit #12 – NYT Article (October 19, 2014)

The New York Times | <http://nyti.ms/1t3JeRm>



N.Y. / REGION

Cuomo Defends Law Denying Guns to Mentally Ill People

By ANEMONA HARTOCOLLIS and THOMAS KAPLAN OCT. 19, 2014

Gov. Andrew M. Cuomo defended a New York State law that has made it easier to take guns away from people who have been deemed mentally unstable, saying on Sunday that the number of people banned from owning firearms since the law took effect over 18 months ago could be too low.

Speaking after a campaign rally in the Bronx, two weeks before the election, Mr. Cuomo was reacting to a report in The New York Times on Sunday, which disclosed that 34,500 people in New York have been reported to a state database as a danger to themselves or others, and prohibited from owning firearms for five years.

Some supporters for the mentally ill have said the number seemed high, and suggested that the law may have included people who were not truly dangerous, stigmatizing the mentally ill.

Mr. Cuomo said that compared to the roughly 140,000 people in the state hospitalized for mental illness in a year, 34,500 seemed to be a conservative number. "I've heard concerns that the number is too low, because obviously there are about 110,000 people who are institutionalized, but yet could still get a gun," Mr. Cuomo said.

It is unclear how many of those hospitalized were involuntarily committed, and therefore barred from buying guns after being entered into a federal database.

Mr. Cuomo's speech was interrupted by young protesters, who were removed by the police. The protesters said they were upset about a range of

issues, including what they viewed as Mr. Cuomo's lackadaisical support of the Dream Act, which would give state tuition aid to students who are undocumented immigrants.

The governor also made a campaign stop in Washington Heights on Sunday, continuing his appeal to Hispanic voters after visiting the Dominican Republic and Puerto Rico last week.

Mr. Cuomo pushed for the gun law, known as the Safe Act, after the mass shooting in Newtown, Conn., in 2012. It also bans assault weapons.

Rob Astorino, the Westchester County executive and Mr. Cuomo's Republican opponent, has said he would repeal the Safe Act. He has favored working with educators, coaches, law enforcement officers and others to help identify early signs of mental illness.

Through a Freedom of Information Law request, The Times found that more than 40,000 reports of potentially violent people had been made since the requirement took effect in March 2013. State officials said roughly 34,500 of those reports represented unique individuals; some people were reported multiple times.

Some mental health professionals were concerned by the reporting process, which seemed to compel mental health workers to report virtually anyone who came through an emergency room for psychiatric screening.

During his speech, Mr. Cuomo said the law was "sensible gun control."

"God bless you, be a sportsman, be a hunter," Mr. Cuomo added. "We're not against guns. But not guns for criminals and for the mentally ill."

A version of this article appears in print on October 20, 2014, on page A19 of the New York edition with the headline: Cuomo Defends Law Denying Guns to Mentally Ill People.

Montgomery vs. Cuomo

Exhibit Group D

Exhibit #13 – Times Union Article (March 12, 2013)

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VA defies gun statute

Says providers will not comply with provision on reporting potentially dangerous patients

By Curtis Skinner, New York World

Updated 6:38 am, Tuesday, March 12, 2013

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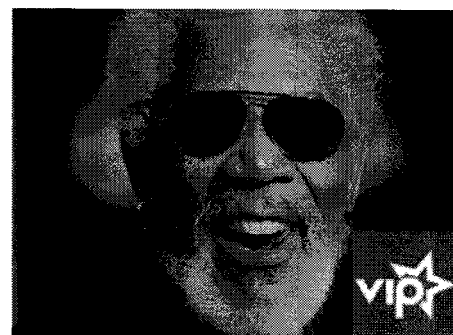
Exterior of the Stratton VA Medical Center on Monday March 11, 2013 in Albany, N.Y. (Lori Van Buren / Times Union)



The U.S. Department of Veterans Affairs said it will not comply with the provision of New York's new gun control law requiring mental health providers to report potentially dangerous individuals to state authorities.

The Secure Ammunition and Firearms Enforcement Act calls on doctors and therapists to alert county health officials to patients they deem "likely" to engage in conduct that will

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information on veterans' mental health is not included in the data viewable by states, according to the VA.

The VA provides health care for more than half of returned U.S. veterans from the Iraq and Afghan wars. New York is home to nearly a million veterans; Suffolk and Nassau counties on Long Island and Erie County in the western part of the state rank among the top counties nationally for share of residents who have served in the armed forces.

Asked about the VA's statement at a Monday cabinet meeting, Gov. Cuomo suggested that providers have discretion in whether or not to report patients. "You know, I really don't know the specifics, but first of all what the law says is it leaves it totally up to the mental health provider if they want to come forward or not — totally up to them," he said.

The bill's language, however, makes it clear that mental health providers "shall" report potentially dangerous patients.

The state Office of Mental Health, Division of Veterans' Affairs and Division of State Police did not respond to questions about the VA or the SAFE Act.

Cuomo was a driving force behind the SAFE Act, which was introduced and passed by the Legislature without public debate in the wake of the massacre at a Newtown, Conn., elementary school. When he signed it in January, the governor said that the law's mental health reporting requirement was "common sense."

Some mental health providers and advocates argue that the law could increase the stigma surrounding mental illness, heightening barriers to obtaining needed care and deterring many of those who most need help from seeking it out — paradoxically, leaving the mentally ill and the public less safe.

For veterans and active-duty military members, who already face serious cultural obstacles to receiving care and suffer higher rates of suicide, especially with firearms, than the general population, these concerns are all the more acute.

"There is a chilling effect on people getting care, and we're particularly concerned about

VA defies gun statute: Times Union

result in serious self-injury or harm to others.

Once notified of potentially harmful individuals, the state will check their names against a new state database of licensed gun owners. If there's a match, local law enforcement will be authorized to remove weapons if their owner does not voluntarily surrender them.

Mark Ballesteros, spokesperson for the Department of Veterans Affairs, said in an email statement that "federal laws safeguarding the confidentiality of veterans' treatment records do not authorize VA mental health professionals to comply with this NY State law."

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Veterans determined mentally incompetent to handle their own affairs by the VA are reported to the federal National Instant Criminal Background Check database. While the background-check database will be used under the New York law to screen firearms sales, the

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veterans," said John Richter director of public policy at the state Mental Health Association. "We have a hard enough time getting veterans in for PTSD. Veterans are a prime example of someone who would have a disincentive to go."

A 2011 report by the RAND Corporation on New York veterans' needs, commissioned by the state Health Foundation, found that more than one in five veterans returned with post-traumatic stress disorder or major depression — rates two to four times higher than the general population for major depression, and eight times higher for PTSD.

Yet only a third of surveyed veterans with a mental health need sought care, often driven away by fears about the confidentiality of their treatment and the possibility of losing respect from colleagues and supervisors. RAND concluded that barriers to treatment — and the view that seeking mental health care was undesirable — needed to be moved aside to improve services and enrollment.

Some providers fear these forces keeping veterans away from care will now be exacerbated by the SAFE Act.

"A lot of them are not getting treatment because they want to avoid stigma and the labeling," said Connie Przepasniak, a licensed mental health counselor in Buffalo and member of the board of directors of the Western New York Veterans Housing Coalition and the Veterans One-Stop Center of Western New York. In the past, she worked as a counselor for the U.S. Department of Veterans Affairs.

"In my experience, a lot of veterans that I've worked with have some kind of a weapon on them, just in terms of self-protection," she said. "And I think it's going to prevent them from seeking mental health treatment."

Mental health professionals have in the past had an array of options in dealing with patients who share thoughts of suicide or harming others, including involuntary hospitalization and warning potential victims, as well as reporting to law enforcement.

But once the law goes into effect, care providers who encounter suicidal or otherwise dangerous patients will have no choice but to report.

Mental Health Association chapters across the state, as well as National Association of Social Workers New York State, the New York State Psychiatric Association and the New York Association of Psychiatric Rehabilitative Services, Inc. have expressed concerns about the bill's possible effects on New Yorkers with mental illnesses.

Jim A., a two-tour veteran of Afghanistan and Iraq, did seek out mental health services when he returned for good. (He asked that his last name not be used to protect his privacy.) At the Albany Stratton VA Medical Center in Albany, doctors diagnosed him with PTSD.

But while he actively sought care, he said he can also see fellow veterans holding back on getting mental health treatment because of the reporting requirement.

"I can't talk to someone about my level of disconnect for fear of my information being shared when I go to buy a rifle," he said, putting himself in another veteran's shoes.

"The sharing of information is a huge concern because, hey, if I want to get a new gun, I better not see the doctor. I better figure this out here by myself."

Curtis Skinner covers health care and education for the New York World, which produced this story. The World (<http://www.thenewyorkworld.com>) is an accountability journalism project of Columbia Journalism School. Times Union State Editor Casey Seiler contributed from Albany.



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